SUPREME COURT OF THE UNITED STATES.

No. ~~20~~ 14.

ABRM. SHANE AND M. JACKSON, APPELLANTS,

VERSUS

JAMES E. SMITH, COMPLAINANT.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE OHIO DISTRICT.

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Pleas begun and held at the court-house in the town of Columbus, on the fourth Monday of December, being the twenty-eighth day of the same month, in the year of our Lord one thousand eight hundred and twenty-nine, and of the independence of the United States of America the fifty-fourth, before the honorable John McLean and John W. Campbell, Judges of the circuit court of the United States in and for the seventh circuit and district of Ohio.

JAMES E. SMITH, *complainant,*
vs.
ABRAHAM SHANE and others, *respondents.* } *In chancery.*

Be it remembered, that heretofore, to wit, on the thirteenth day of August, in the year of our Lord one thousand eight hundred and twenty-two, came James E. Smith, a citizen and resident of the city of Philadelphia, in the State of Pennsylvania, by Granger and Swan, Esqrs., his solicitors, and filed on the chancery side of the United States' seventh circuit court in and for the district of Ohio a certain bill of complaint against Abraham Shane and Return J. Meigs, which said bill of complaint is in the words and figures following, to wit:

To the honorable the Judges of the circuit court of the United States for the seventh circuit and district of Ohio, humbly complaining, sheweth unto your honors:

Your orator, James E. Smith, a citizen and resident of the city of Philadelphia, in the State of Pennsylvania, that some time in the year one thousand seven hundred and ninety-nine, your orator, and one James Johnston, now of Pittsburg, in said State of Pennsylvania, entered into a copartnership for the purpose of purchasing and locating United States' military land warrants granted for military services rendered during the war of the revolution, and some time on or about the ninth day of February, one thousand eight hundred, the said Johnston, for himself and your orator, purchased of one John S. Wills a military land warrant for five hundred acres, issued in the name of one Abraham Buford, now of the State of Kentucky, and in full consideration wherefore the said Johnston paid to the said Wills the

sum of about one hundred sixty-six and two-thirds dollars, and the said Wills then and there, for the consideration aforesaid, transferred the said warrants to the said Johnston for the joint benefit of himself and your orator, by delivery, the name of the said Buford, as your orator expressly charges, in his own proper handwriting being endorsed thereon, which said warrant had been by the said Buford, at some time previous, put into the hands of one Thomas Gibson, to be sold for the said Buford's benefit, and the said Buford had at that time, or subsequently, for the purpose of securing to the purchaser a perfect title to the said warrant of the lands on which the same might be located, made to the said Gibson a power of attorney to transfer the same; and the said Gibson had, at some time previous to the said purchase by your orator and the said Johnston, for a valuable consideration, sold and delivered the said warrant to the said Wills. And your orator further shows, that some short time previous to the month of August, one thousand eight hundred and one, he repaired to the seat of Government of the United States, at Washington, for the purpose of locating the said land warrant for the joint benefit of himself and the said Johnston, but the drafts of lots for location not being then prepared, your orator entrusted the location of the said warrant to one Frederick De Krafft, since deceased, and pointed out to him lots seventeen, eighteen, nineteen, twenty, and twenty-one, in section number three of township number eight in range number one of the United States' military district in the territory northwest of the river Ohio, and in the now county of Tuscarawas, in said State of Ohio, on which to locate the said warrant; which said warrant was shortly afterward, by the agency of the said De Krafft, located for the joint benefit of your orator and the said Johnston, but in the name of the said Buford, upon the five lots of land above mentioned, and a patent bearing date the sixth day of August, 1801, was granted in the name of the said Buford, by the President of the United States, for the same said five lots, being estimated to contain about one hundred acres each, which patent was shortly after delivered to your orator, and has remained in his hands ever since, to which for greater certainty he refers, and prays the same to be taken as part of this his bill of complaint. And your orator further shows, that shortly after obtaining the same patent, your orator and the said Johnston, as tenants in common, took possession of the said five lots of land, and from thence until the grievances herein after mentioned continued peaceably and quietly to hold only and enjoy the same as if their own proper estate; and during all that time your orator and the said Johnston, either in the name of your orator and the said Johnston, or of the said Johnston, who then resided in the said State of Ohio, entered the same for taxation in the said State of Ohio, and annually paid the taxes which were charged thereon, and some time in the year 1802 your orator procured a deed of conveyance to the said Johnston for the said five lots of land to be drawn, to be executed by the said Buford, which is hereto attached, and which your orator prays may be taken as part of this his bill of complaint; but at that time his residence had either not been discovered, or was so remote from that of your orators or the said Johnston, that it was never presented to him for execution. Your orator, being well assured that the said Buford was a man of the most honorable and upright character, rested satisfied that no conveyance would be made by him to any other person than to your orator or the said Johnston, or to their legal representatives; and your orator expressly charges, that the said Buford, at all times after the delivery of the said warrant to

the said Gibson as aforesaid, stood ready to make to any person who should derive a title to the same under any sale thereof made by the said Gibson, any further assurance of the title to the said warrant, or to the lands on which the same might be located, which might be reasonably required, whether the said warrant should be located in the name of the said Buford, or of any legal holder thereof, and that the said Buford would, at any time after the said sale of said warrant to your orator and the said Johnston, and after the location of the same upon the said five lots of land, have made to your orator and the said Johnston, or to such other persons as they might direct, a conveyance in fee simple of said lots of land, on being duly informed that the said warrant had been in manner hereinbefore stated, in due course transferred to them, and being possessed of such information that the said Buford for no consideration whatever would have conveyed the said premises to any other person. And your orator further shows, that some time in the year 1814 or 1815, (your orator and the said Johnston then being in the quiet and peaceable possession, and the equitable and reputed owners of the said five lots of land,) one Abraham Shane, of the said county of Tuscarawas, a citizen and resident of the said State of Ohio, and who your orator prays may be made defendant to this his bill of complaint, applied to the said Johnston, and actually made to him an offer to purchase of him the said five lots of land, but to which the said Johnston did not accede, he at the same time informing the said Shane that your orator, then residing in Philadelphia, was jointly interested with him in the said lands, and that he would be willing to sell the same upon any terms that might be agreed upon between the said Shane and your orator. And your orator further shows, that some time in the early part of the year 1815, or thereabouts, the said Shane called on your orator at his office in Philadelphia, and inquired whether or not your orator was concerned with the said Johnston in some lands in the State of Ohio; your orator informed him that he was; the said Shane then gave to your orator his name, and informed him that he resided in the State of Ohio, and that he wished to purchase a tract which he understood belonged to your orator and the said Johnston, and which he would point out. Your orator then informed the said Shane that his papers were at his dwelling-house, and that if he would call there in the morning he would show them to him. The next morning the said Shane called, and your orator handed him, to look over, a bag containing sundry patents and deeds of land in the said State of Ohio, and among them the said patent to said Buford, and the said deed which your orator procured to be drawn to be executed by the said Buford to the said Johnston; after examining them some time, the said Shane singled out the patent to the said Buford, and wished to know if your orator would sell the said lands therein specified, and at what price, as he said he wished to purchase them. Your orator answered, that he had left the sale and management of those lands entirely to the said Johnston, he being resident in the State of Ohio; to which the said Shane replied, that he had made proposals to the said Johnston to purchase the same, but that they could not agree upon the price. By this time the said Shane, who had continued to examine the said papers, had discovered that the said deed which your orator had caused to be prepared to be executed by the said Buford to the said Johnston, had not been executed by him, and shortly after left your orator. And your orator further shows, that the said Shane some short time afterwards having discovered that the said John S. Wills had once been the owner of said warrant, but well knowing that

the said Wills had, as before stated, sold the same to your orator and the said Johnston, or to one of them, combining and confederating with one Return J. Meigs, a citizen and resident of the said State of Ohio, and who your orator also prays may be made defendant to this his bill of complaint, to cheat and defraud your orator and the said Johnston out of the said five lots of land, applied to the said Wills under the pretence of purchasing his title to said lots of land; and although, as your orator charges, the said Wills then represented to the said Shane that he had previously disposed of all his interest in the said warrant to your orator and the said Johnston, or to the said Johnston, and had then no interest or control in said lands whatever; and although, in part, the said Wills had not any interest therein whatever, as the said Shane then well knew, yet, nevertheless, the said Shane, by falsely and fraudulently pretending and representing to the said Wills that the aforesaid sale made by him to the said Johnston was invalid, and by offering to pay him a large sum of money for his quit claim to said premises, whether the same conveyed any title or not, finally induced the said Wills, he then being in needy and distressed circumstances, for the consideration of about eleven hundred dollars, by the said Shane, on behalf of himself and the said Meigs, paid or secured to be paid to the said Wills, (a sum greatly below the then real value of said lands,) to make to the said Shane and Meigs some kind of writing, in deed or quit claim, release or relinquishment, to said warrant and five lots of land. And your orator further shows, that the said Shane and Meigs further combining, contriving, and intending to cheat your orator and the said Johnston out of the said lots of land, and with full knowledge of all the circumstanees before stated, as to the sale of said warrant by the said Buford, through his attorney in fact, the said Gibson, to the said Wills, and as to the said sale and transfer by the said Wills to your orator and the said Johnston, and as to the said warrant having been located by your orator as aforesaid, upon said five lots of land, in the name of the said Buford, but for the only use and benefit of your orator and the said Johnston; and that the said Buford held himself bound and liable to convey the legal estate in said lands to the true and lawful assignee and holder of said warrant, deriving title through the agency of the said Gibson, and to none other; they, the said Shane and Meigs, procured from the office of the Secretary of State of the United States a certified copy of the said patent to the said Buford, of the said five lots of land, with which the said Shane, acting for himself and the said Meigs, proceeded to the residence of the said Buford, in the State of Kentucky, and by falsely and fraudulently representing to the said Buford that they, said Shane and Meigs, had fairly and honestly purchased the said lots of land on the said warrant, which was located thereon, of the said Wills, and that the said Wills was the equitable owner of the said lots of land at the time of their said pretended purchase by virtue of an assignment of the said warrant to him by the said Gibson; and in order the better to secure and cover their said fraudulent designs, by presenting to the said Buford a pretended writing addressed to the said Buford, and purporting to be signed by the Wills, certifying that the said Shane and Meigs were the true and lawful owners of said land by virtue of the sale of the said warrant by the said Gibson to the said Wills, and by the said Wills to the said Shane and Meigs, and directing and requiring the said Buford to execute a deed for said lots to the said Shane and Meigs, and by presenting to the said Buford the said certified copy of the said patent as and for the original patent, he, the said Shane,

acting for himself, and as agent for the said Meigs, finally imposed upon and deceived the said Buford, and induced him to believe that they, the said Shane and Meigs, were the true and lawful assignees of the said warrant, derived through the agency of his attorney in fact, the said Gibson, and equitably entitled to a conveyance from him of the legal estate in and to the said five lots of land; and your orator in fact says, that the said Buford, confiding in the said false and fraudulent statements and misrepresentations of the said Shane, and believing the same to be true, and for no other cause and consideration whatever, did make and execute to the said Shane and Meigs a deed in fee simple for the said five lots of land, bearing date about the 15th day of May, 1815, and at the same time delivered the said deed to the said Shane. In which said deed, by the artful contrivance and procurements of the said Shane, acting for himself and the said Meigs, the sum of five hundred dollars is set forth and stated to have been paid by the said Shane and Meigs to the said Buford, as the consideration for the said conveyance, when in truth and in fact, as your orator charges, not one cent was either paid or promised, agreed or secured to be paid to the said Buford by the said Shane and Meigs, for the purpose, or in any way or manner by the said Buford asked or required to be paid. And your orator further shows, that some time on or about the day of , 1821, your orator and the said Johnston dissolved their said partnership concern relative to the said five lots of land, and divers other tracts which had been entered and held by them in common, in the said United States' military tract; and upon a settlement of the said concern, and a division of their said joint property, the said five lots of land were aparted and set off to your orator, in severalty; and the said Johnston, in consideration thereof, by his deed bearing date the day of , 1821, did release, assign, transfer, and convey to your orator, all his right, title, and interest, in and to the said five lots of land, a copy of which deed is hereto attached, which your orator prays may be taken as a part of this his bill of complaint: and being thus invested with the whole equitable interest in said five lots of land, and being fully entitled to every valuable privilege and perquisite appertaining to the same, your orator well hoped that he should have been permitted to enjoy the quiet and peaceable possession of said land, and to have received the issues and profits thereof, and that said Shane and Meigs, as the holders of the naked title, would have fully and voluntarily conveyed the said premises to your orator, as in equity and justice they ought; and your orator has, in an amicable manner, applied himself to them for that purpose. But now so it is, may it please your honors, that the said Abraham Shane and Return J. Meigs, having entered into a combination and confederacy together, and with divers other persons as yet unknown to your orator, (whose names, when discovered, your orator prays may be inserted herein with apt words to charge them,) to defraud your orator of the premises, and they having formed a design to defeat your orator of the benefits of his said purchase, and to deprive him of his said five lots of land and all his interest therein, so as aforesaid fairly and honestly acquired, the said Shane and Meigs refuse, and persist in their refusal, to convey said lands to your orator, and to suffer him to occupy and enjoy the same, and have actually taken possession of the whole of said premises, and turned your orator out of the possession thereof; all of which actings and doings of the said confederates are contrary to equity and good conscience, and tend to your orator's great wrong and injury. In tender consideration whereof, and for as much as

your orator cannot compel a conveyance of said premises, or be otherwise relieved than by the aid and assistance of this honorable court, sitting as a court of chancery, where matters of this nature are properly cognizable and relievable; to the end, therefore, and in order that the said Abraham Shane and Return J. Meigs, and their confederates, when, and as they shall be discovered, may, upon their several and respective corporal oaths, true, direct, and perfect answers make to all and singular the premises hereinbefore set forth, as fully as if the same were here again repeated, and they thereto particularly interrogated, to be answered unto, and more especially that the said Shane and Meigs may, according to the best of their respective knowledge, information, and belief, answer and set forth whether they, or one of them, and which of them, were not informed, previous to the said pretended purchase of the said Wills, that your orator and the said Johnston, or the said Johnston, were in possession of, and claimed title to, the said five lots of land; whether the said Shane did not, previous to this said pretended purchase of said Wills, and some time in the year 1814 or 1815, or at some other time, apply to the said Johnston to purchase said lands; and whether he did not make the said Johnston an offer for said lands. If any, what sum did he offer, and at what time. Whether the said Johnston did not inform the said Shane, and at what time, that your orator was jointly interested with him in said lands. Whether the said Shane did not, previous to the said pretended purchase of said Wills, and at some time in the year 1815, or at what time, apply to your orator in Philadelphia, to purchase said lands, and if not for that purpose for what purpose did he apply to your orator in Philadelphia, and who informed him that there was such person as your orator residing in Philadelphia. Whether your orator did not at that time hand to the said Shane a number of deeds and patents for lands in the State of Ohio, and whether among them the said Shane did not find the patent to the said Buford for the said five lots of land hereto attached; and whether he did not inquire of your orator if he would sell the said lands, and at what price, and state to your orator that he wished to purchase them. Whether your orator did not inform said Shane that he had confided the sale of those lands to said Johnston, and whether the said Johnston did not reply that he had made proposals to purchase said lands to the said Johnston, but that they could not agree upon the price. Whether any thing, and what, passed between your orator and said Shane respecting said lands; whether the said Shane did not discover at that time among the deeds and patents handed to him by your orator the draft of the deed hereto attached, prepared to be executed by the said Buford to the said Johnston for the said five lots of land, or if he did not see some writing among the papers of that description. If the said Shane and Meigs, or one of them, and which of them, were not informed previous to their said pretended purchase of said Wills, that the said Wills had sold the said warrant to your orator and the said Johnston, or to one of them. If not, what they were informed upon that subject, and by whom. Whether the said Shane did not apply to the said Wills for the purpose of procuring from him a quit claim of his pretended title to said warrant and lands; and whether the said Wills did not inform the said Shane previous to his said pretended purchase that he had sold the said land warrant to your orator and the said Johnston, or to one of them; and whether he did not, to induce the said Wills to make a conveyance of his pretended title to him, represent that the said sale of the said warrant to the said Johnston was invalid, or what representation did he make to the said Wills on that subject. Whether the said Shane and Meigs, or one of them, had not information of

your orator's title previous to the execution of the said deed to them by the said Buford. Whether the said Shane did not present to the said Buford, to induce him to execute the said deed, a writing purporting to be signed by the said Wills, certifying that the said Wills had sold the said land on the said warrant to the said Shane and Meigs, and directing and requiring said Buford to make to them a deed for said lands. Whether the said writing was in fact executed by the said Wills, or by whom was the same executed. Whether the said Shane and Meigs, or one of them, did not know previous to their making application to the office of the Secretary of State for a copy of said patent, that the said original was in the hands of your orator, or of the said Johnston, and whether they, or either of them, ever applied to your orator or the said Johnston for the same. Whether they did not procure the said certified copy of the said patent, and present the same to the said Buford, for the purpose of inducing him to execute to them a deed for said lands; and whether the said Shane informed the said Buford that it was a copy, and not the original patent, which was so shown to him, or whether the said Buford knew it was only a copy. And if the said Buford did know it was a copy, how did the said Shane account to him for not producing the original. What was the amount paid by the said Shane and Meigs to the said Wills for his assignment; at what time, and in what manner, was the same paid. What assurance, or memorandum, or writing, did the said Shane and Meigs, or either of them, receive from the said Wills at the time of their pretended purchase of his title, or afterwards; where is now such memorandum, assurance, or writing; and that they may, if in their possession or power, set forth and produce the same. Whether there was any, and if any, what consideration paid by the said Shane and Meigs, or either of them, to the said Buford for said deed; and was the consideration expressed in said deed, or any part of it paid to the said Buford, or in any way asked or required of him to be paid; and was not the said consideration procured to be inserted in the said deed by the said Shane without the direction of the said Buford, that the said Shane and Meigs may severally set forth and declare; what was the date of the said certificate produced by the said Shane to the said Buford at or about the time of the execution of the said deed, by whom signed, and what its contents, and with whom was the said certificate deposited after the said deed was executed, and in whose possession is the same at this time; and if in the possession or power of the said Shane and Meigs, or either of them, that they produce and set forth the same. Whether the said Buford did not refuse to execute a deed to said Shane and Meigs, unless the said Shane should produce a certificate that they were the true and rightful owners of said lots of land by lawful purchase, derived through his agent, the said Gibson. Whether the said Shane and Meigs, or either of them, had any, and what knowledge of your orator's claim, or the claim of said Johnston for the said Wills, or any other person; and whether the said Shane disclosed such their knowledge to the said Buford at or before the time of receiving from him the said deed. Whether, in making their said pretended purchase from said Wills, and in procuring their said deed from the said Buford, the said Shane did not act as the agent and attorney in fact for the said Meigs; and that your honors would order and decree that the said Shane and Meigs convey to your orator the said five lots of land, or so much thereof as they may be found to have therein, and for such parts thereof as may appear to your honors to have been sold and conveyed by the said Shane and Meigs, to bona

fide purchase without notice, that the said Shane and Meigs may be deemed to pay to your orator the amount of the purchase money, and proceeds of sale of such parts, with the interest thereon, or the value thereof; and that your orator may receive such other and further relief in the premises as the nature of his case may require. May it please your honors to grant to your orator your most gracious writ of subpœna, to be directed to the said Abraham Shane and Return J. Meigs, commanding them, under a certain pain therein to be mentioned, to be and appear before your honors in this honorable court, next to holden at Columbus, within and for the said district of Ohio, on the first Monday of September next, then and there to answer to this your orator's bill of complaint, and to stand to and abide such order and decree therein as to your honors shall seem just and equitable; and your orator, as in duty bound, will ever pray, &c.

GRANGER & SWAN, *Sols. for comp't.*

This indenture, made the day of in the year of our Lord one thousand eight hundred and two, between Abraham Buford, of a colonel in the late army of the United States of America, of the one part, and James Johnston, of the Territory of the United States northwest of the river Ohio, gentleman, of the other part; whereas the United States of America, by patent, under the hand of Thomas Jefferson, and seal of the United States, dated at the city of Washington, the sixth day of August, Anno Domini one thousand eight hundred and one, did grant and confirm unto the said Abraham Buford, his heirs and assigns, in consideration of his military services, five certain tracts of land, estimated to contain each one hundred acres, being lots numbered seventeen, eighteen, nineteen, twenty, and twenty-one, in the third quarter of the eighth township in the first range of the tract appropriated for satisfying warrants for military services, surveyed and located in pursuance of the acts of Congress therein recited, together with the appurtenances, to hold to him, the said Abraham Buford, his heirs and assigns, for ever, subject to the conditions, restrictions, and provisions contained in the said recited acts, as in and by the said recited pateat more fully appears.

Now this indenture witnesseth, that the said Abraham Buford, for and in consideration of the sum of one hundred and sixty dollars, lawful money of the United States, to him in hand paid by the said James Johnston at the time of the execution hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm, unto the said James Johnston, his heirs and assigns, all those the five aforesaid tracts of land, estimated to contain each one hundred acres, being lots numbered seventeen, eighteen, nineteen, twenty, and twenty-one, on the said third quarter of the eighth township and the first range of the tract appropriated for satisfying warrants for military services, together with all and singular the rights, members, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging, and the reversions and remainders thereof, and also all the estate, right, title, interest, property, claim, and demand whatsoever, of him, the said Abraham Buford, as well at law as in equity, of, in, to, and out of the same, to have and to hold the said five tracts of land, hereditaments, and premises, hereby granted, with the appurtenances, unto the said James Johnston, his heirs and assigns, to and for his and their own proper use and behoof for ever, subject to the condition, restriction, and provisions, in the

said recited acts of Congress contained; and the said Abraham Buford and his heirs, all and singular the premises hereby granted, with the appurtenances, unto the said James Johnston, his heirs and assigns, subject, as aforesaid, against him, the said Abraham Buford, and his heirs, and against all and every other person or persons whatsoever, lawfully claiming, or to claim, by, from, or under him, them, or any of them, shall and will warrant and for ever defend by these presents.

On witness whereof, the said parties have interchangeably set their hands and seals hereunto, dated this day and year first above written, the day of Anno Domini, 1802, before me,

[SEAL.]

Sealed and delivered in presence of us,

Came the above named Abraham Buford, and acknowledged the above written indenture to be his act and deed, and desired the same may be recorded as such, according to law, in the Territory of the United States northwest of the river Ohio.

Witness my hand and seal, the day and year aforesaid.

[SEAL.]

Received the day of the date of the within written indenture, of the within named James Johnston, the sum of one hundred and sixty dollars, being the full consideration money within mentioned, 160 dollars.

Witness at signing:

Seventh circuit court U. S. district of Ohio.

JAMES E. SMITH
vs.
ABRAHAM SHANE and RETURN J. MEIGS.

State of Pennsylvania, Philadelphia county, sct.

Personally appeared before me, Hugh Furgerson, Esq., one of the associate judges of the county court of common pleas of the said county, at the county court-house in the city of Philadelphia, on this tenth day of November, Anno Domini one thousand eight hundred and twenty-four, at 5 o'clock, P. M., Thomas Mitchell, of the said city, conveyancer, to me personally known, who, being first cautioned, examined, and affirmed, to testify the whole truth, and touching the above cause, deposeth and saith, that the within deed or instrument of writing, purporting to be from Abraham Buford to James Johnston, was drawn by this deponent some time in the year one thousand eight hundred and two, at the request of James Johnston, and further saith not.

T. MITCHELL.

Witness my hand, the day and year aforesaid.

HUGH FURGERSON.

State of Pennsylvania, Philadelphia county, sct.

I certify, that at the county court-house in the city of Philadelphia, on the tenth day of November, Anno Domini 1824, at 5 o'clock, P. M., Thomas Mitchell, of the said city, conveyancer, personally appeared before me, an associate judge of the court of common pleas of the said county, and be-

ing carefully examined, cautioned, and affirmed, to testify the whole truth, &c., touching a certain cause now depending and undecided in the seventh circuit court of the United States for the district of Ohio, wherein James E. Smith is plaintiff, and Abraham Shane and Return J. Meigs are defendants, deposed and testified to the matters and things stated and set forth in the above deposition, which was reduced to writing, and subscribed by the said deponent in my presence. I do also certify that the above named Thomas Mitchell resides at a greater distance than one hundred miles from Columbus, Ohio, which is the reason of the above deposition being taken, that I am not of counsel nor attorney to either of the parties to the above mentioned cause, nor interested in the event of said suit, and that neither of the defendants to said suit, or their attorney or attorneys, reside, live, nor are they (as I am informed) within one hundred miles of the place of (taking, viz) the caption of the said deposition, and therefore no notice was given them of taking the same. Said deposition was taken at the request of James E. Smith.

HUGH FURGERSON.

Philadelphia county, sct.

I, Mathew Randall, prothonotary of the court of common pleas above named, do certify that Hugh Furgerson, Esq., before whom the above acknowledgment was made, and who has thereto subscribed his name, was, at the time of so doing, and still an associate judge of the said court, duly commissioned and qualified, to all whose acts as such full faith and credit is and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at Philadelphia, the tenth day of November, A. D. 1824.

MATHEW RANDALL. [L. S.]

Know all men by these presents, that I, James Johnston, of Steubenville, in the State of Ohio, for and in consideration of one hundred dollars, to me in hand paid by James E. Smith, of Philadelphia, Pennsylvania, the receipt whereof I do hereby acknowledge, have remised, released, and by these presents, for myself and my heirs, do remise, release, and for ever quit claim, unto the said James E. Smith, his heirs and assigns, for ever, all the right, title and interest, property and estate, which I, the said James Johnston, have in and to the following described tracts or parcels of land, lying and being in the county of Tuscarawas, State of Ohio, viz: two one hundred acre lots, Nos. fourteen and nineteen, of third range, fifth township, and first quarter; three one hundred acre lots, Nos. thirty-four, thirty-five, and thirty-six, of the second range, fifth township, and second quarter; three one hundred acre lots, Nos. ten, thirteen, and fourteen, of the second range, sixth township, and first quarter; three one hundred acre lots, Nos. thirty-two, thirty-three, and thirty-seven, of the second range, sixth township, and third quarter; two one hundred acre lots, Nos. twenty-six and thirty-three, of the third range, fifth township, and first quarter; two one hundred acre lots, Nos. one and two, of the second range, seventh township, and fourth quarter; three one hundred acre lots, Nos. twelve, thirteen, and twenty-four, of the second range, seventh township, and fourth quarter; two one hundred acre lots, Nos. one and two, of the third range, sixth township, and fourth quarter; two one hundred acre lots, Nos. seven and ten, of the third range, fifth township, and first quarter; one one hundred

acre lot, No. four, of the third range, fifth township, and first quarter; one one hundred acre lot, No. eleven, of the third range, fifth township, and first quarter; one one hundred acre lot, No. twenty-five, of the second range, sixth township, and third quarter; one one hundred acre lot, No. twenty-two, of the first range, eighth township, and third quarter; one one hundred acre lot, No. four, of the second range, eighth township, and fourth quarter; one one hundred acre lot, No. three, of the second range, eighth township, and fourth quarter; eight one hundred acre lots, Nos. twenty one, twenty-two, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty two, of the third range, fifth township, and first quarter; one one hundred acre lot, No. thirty-eight, of the second range, fifth township, and second quarter; one one hundred acre lot, No. two, of the third range, fifth township, and first quarter, (and five one hundred acre lots, Nos. seventeen, eighteen, nineteen, twenty, and twenty one, of the first range, eighth township, and third quarter,) in all, amounting to four thousand three hundred acres; to have and to hold the said premises, with all the privileges and appurtenances, unto him, the said James E. Smith, his heirs and assigns, for ever, so that neither I, the said James Johnston, nor any other person or persons in my name or behalf, shall or will hereafter claim or demand any right or title to the premises aforesaid, or any part thereof, but they and every of them shall, by these presents, be excluded and for ever barred.

In witness whereof, I hereunto set my hand and seal, this [*~~sixth day of September, one thousand eight hundred and twenty~~*] thirteenth day of May, A. D. 1821.

JAMES JOHNSTON. [SEAL.]

In presence of us,
MAG'S M. MURRAY.
DAVID PORTER.

The words "sixth day of September, one thousand eight hundred and twenty," being previously erased.

City of Pittsburg, sct.

Before me, an alderman in and for the said city, personally came the within named James Johnston, and acknowledged the within written instrument of writing to be his act and deed, and desired the same to be recorded as such.

In testimony whereof, I have hereunto set my hand and seal, this 30th day of May, A. D. 1821.

MAG'S M. MURRAY. [SEAL.]

City of Pittsburg, Pennsylvania, sct.

I, George Cochrane, clerk of the Mayor's court of the city of Pittsburg, do by these presents certify that Magnus M. Murray, Esquire, before whom the foregoing acknowledgment was taken, was, at the time of taking thereof, and now is, an acting alderman in and for the said city, duly commissioned and sworn, to all whose acts as such due faith and credit is, and of right ought to be given.

Witness my hand, and the seal of the said court, at Pittsburg, the 30th day of May, A. D. 1821.

GEORGE COCHRANE, *Clerk M. C.* [L. S.]

13.

State of Ohio, Tuscarawas county, ss.

Recorder's Office. Received and entered for record, June 15th, 1821, and recorded October 27th, 1821, in record book, vol. 3, page 339.

Attest: GEO. W. CANFIELD, *Recorder.*

And thereupon the following writ of subpœna, issued out of the clerk's office of said court, directed to the Marshal of the district of Ohio, to wit:

The United States of America, district of Ohio, sct.—To the Marshal of said district, greeting:

We command you to summon Abraham Shane and Return J. Meigs, citizens of and residents in the State of Ohio, if they be found in your bailiwick, to appear before the judges of the circuit court of the United States for the seventh circuit and district of Ohio aforesaid, at Columbus, on the first Monday in the month of September next, to answer James E. Smith, a citizen of and resident in the State of Pennsylvania, of a certain bill in chancery, by him against them exhibited, and this they shall in no wise omit under the penalty of the law, and have then there this writ.

Witness the honorable John Marshall, Chief Justice of the United States, this 14th day of August, 1822, and in the 47th year of the independence of the United States of America.

Attest: HARVEY D. EVANS, *Clerk.* [L. S.]

And afterwards, to wit, at the September term of said court, A. D. 1822, being the term to which the aforegoing writ of subpœna was in form aforesaid made returnable, came into court here the marshal of the district aforesaid, and made return of the said writ of subpœna, with the following return endorsed thereon, to wit:

Not served for want of time.

J. C. BRODERICK, *Dep. Marshal.*

And afterwards, to wit, on the first day of October, A. D. 1822, the following alias writ of subpœna issued out of the clerk's office of said court, to wit:

The United States of America, district of Ohio, sct.—To the Marshal of said district, greeting:

We again command you to summon Abraham Shane and Return J. Meigs, citizens of and residents in the State of Ohio, if they be found in your bailiwick, to appear before the judges of the circuit court of the United States' seventh circuit, and district of Ohio aforesaid, at Columbus, on the first Monday in the month of January next, to answer James E. Smith, a citizen of and resident in the State of Pennsylvania, of a certain bill in chancery, by him against them exhibited, and this they shall in no wise omit under the penalty of the law, and have then there this writ.

Witness the honorable John Marshall, Chief Justice of the United States, this first day of October, 1822, and in the 47th year of the independence of the United States of America.

Attest: HARVEY D. EVANS, *Clerk.* [L. S.]

And afterwards, to wit, at the January term of said court, A. D. 1823, the term to which the said aforegoing writ of alias subpœna was made returnable, came the marshal of the district aforesaid, and made return of the same, with the following endorsements thereon, to wit:

Served. WM. VANCE, *D. M.*

And thereupon this cause was continued.

And afterwards, to wit, at rules held in the clerk's office of said court in the month of February, in the year A. D. 1823, came the complainant, by his counsel aforesaid, and entered a rule upon the respondents to answer in 90 days.

And afterwards, to wit, at rules held as aforesaid, in the months of March and April, this cause was further continued.

And afterwards, to wit, at rules held as aforesaid, in the month of May, in the year last aforesaid, came the complainant, by his counsel, and the respondents having failed to appear or answer, as they were ruled to do, a decree pro confesso was entered against them accordingly.

And afterwards, to wit, at the September term of said court, A. D. 1823, came into court here as well the said complainant as the respondents, and thereupon the decree pro confesso obtained by the complainant against the defendants at rules held in the clerk's office is set aside; and thereupon this cause was continued.

And afterwards, to wit, at rules held in the clerk's office as aforesaid, in the months of October, November, and December, this cause was further continued.

And afterwards, to wit, at rules held as aforesaid, in the month of January, in the year A. D. 1824, came the respondents, and filed their separate answers to the bill of complaint of the complainant in the premises aforesaid, as follows, to wit:

ABRAHAM SHANE & RETURN J. MEIGS, *ads.* JAMES E. SMITH. } *The several answer of Abraham Shane to the bill of complaint of James E. Smith.*

This respondent now, and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or unto so much thereof as he is advised it is material for him to make answer unto, answers and says, true it is, this respondent, in common and equal right with his co-defendant, Return J. Meigs, owns the legal title, and is in possession of the land described in the complainant's bill, being lots No. 17, 18, 19, 20, and 21, in section third township eight and range one in the military district, lying in the county of Tuscarawas; and this respondent has ever heretofore supposed, and does yet verily believe, that he and his co-defendant possess in themselves the full, equitable, as well as legal title to said land, and here respectfully submits the manner of their purchase, and the facts upon which their equitable and legal claim to the premises is founded.

In the year 1812, in the early part thereof, this respondent learned at the auditor's office of the State of Ohio, that the lots aforesaid were located in the name of Colonel Abraham Buford: he therefore engaged Jeremiah McLean, Esq. to ascertain the residence of the said Buford, which he did in a short time thereafter, and informed the respondent, who immediately wrote to said Buford concerning said lots of land, inquiring if he were the owner, and if he would dispose of them. To that letter this respondent received an answer, dated August 20th, 1812, which is herewith filed as a part of this answer, marked A. On the 18th June, 1814, this respondent wrote again to the said Buford concerning said lots, and received from him a second letter, dated June 28th, 1814, which is herewith exhibited as a part of this answer, marked B. Shortly after the receipt of this last letter, per-

haps as late as 1st of January, 1815, this respondent saw and spoke with Colonel John S. Wills, mentioned in said letter, and the same who is referred to in the complainant's bill concerning said lots of land. He then informed this respondent that he possessed the equitable interest in said lots, that he had not incumbered that equitable interest by a sale or bargain with any one, that he would sell and transfer to this respondent if the terms would be agreed upon between them, but at that time no bargain was concluded. In the month of March following, this respondent met the said John S. Wills in the city of Petersburg, Virginia, and there made the purchase of his equitable interest in the said five lots of land, the said Wills then again averring that he had neither bargained or sold the same to any one; the said Wills being in great haste at the time this respondent met him, being about to take a passage in one of the mail stages. The terms of the purchase were not then entirely settled, nor were they for want of time reduced to writing, but it was agreed that this respondent should pay Col. Buford the purchase money of the warrant due him from the said Wills, and receive a deed from Buford, and that the amount of the said Wills's claim, over and above the purchase money so to be paid to the said Buford, should be settled between the said Wills and this respondent when they should return to Ohio, at some future day, and whatever that amount should be found to be was to be paid by this respondent to the said Wills in hand. On the 15th day of May following, this respondent, in pursuance of his agreement with the said Wills, and in full confidence of its fairness and honesty, visited Col. Buford at his residence, in Kentucky, and distinctly and clearly related to him the contract which he had made with the said Wills, as before stated. Col. Buford stated to this respondent that he had already been paid by said Wills the amount for which he sold the said warrant, and that his recollection had failed him so much he could not say but that he had already conveyed the said lots to some person upon Wills's order; he therefore felt unwilling to execute a conveyance in fee simple; but upon respondent's offering to accept a quit claim of the said Buford's right and title to said lots, being confident that said Wills had sold to none else, and that said Buford had not conveyed to any person whatever, the said Buford made and executed on the said 15th May, 1815, a quit claim deed of the said five lots of land to this respondent and the said Return J. Meigs, in whose behalf, as well as that of himself, this respondent acted in all his negotiations and transactions touching the title, right, and possession of the said lots of land; and which said deed this respondent accepted, for himself and the said Meigs, as a performance on behalf of the said John S. Wills of that part of his aforesaid contract, and which deed this respondent herewith exhibits as a part of this his answer, marked C. In the month of October, 1815, this respondent and the said Wills agreed, in pursuance of their contract, in the amount to be paid to the said Wills for his interest in said lots of land, and thereupon paid him one hundred dollars in hand, and the next day paid him eight hundred dollars more, and gave him a note for two hundred dollars, being the balance of eleven hundred dollars, the whole amount which this respondent paid the said Wills for his interest in said lots, and which the respondent believes was a fair price for said land. This respondent would here further add to the foregoing statement of facts, that, before entering into any negotiation with the said John S. Wills relative to the said lots of land, he made every possible search in the offices of record and registry of deeds in the State of Ohio, and used every other due diligence to ascertain who was the rightful

owner of the equitable and legal title to the said lots of land, and could discover no title or claim whatever, excepting as above stated, in the said Wills, and the *warrantee*, Col. Buford; the information which this respondent did receive touching the pretended claims of the complainant and one Colonel James Johnston, will be disclosed by his answers to the interrogatories propounded in the bill. This respondent further states, that immediately after the aforesaid purchase of said Wills, in the year 1815, he took possession of the said lots of land for himself and his co-defendant, and has ever since held possession thereof, and paid all taxes that have been levied thereon, and that their title to said lots of land has not been heretofore questioned, except by a bill in chancery filed by one James Johnston against this respondent and his co-defendant, on the equity side of the court of common pleas for the county of Tuscarawas, in the fourth circuit of the courts of common pleas of the State of Ohio, on the fourth day of December, 1816, to which bill (a copy whereof is herewith filed) this respondent begs leave to refer this honorable court of the pretended partnership between the complainant and the said Johnston. This respondent knows nothing; but it would seem, from the bill in chancery above referred to, that no such partnership existed touching the aforesaid five lots of land at the time said bill was filed, which was the 4th December, 1816. This respondent knows nothing of the pretended purchase by Johnston of John S. Wills, or of the supposed delivery by Wills to the said Johnston of the warrant of Buford, neither does he know any thing of the endorsements of Buford's name on the back of said *warrant*, but he has good reason to believe, and verily does believe, that no such purchase was ever made by said Johnston of said Wills in a fair and honest way, and that the possession of the warrant by said Johnston and Smith (if they ever did possess it) was fraudulent. This respondent does not know, nor does he believe, that the complainant ever procured, or caused Frederick De Krafft, or any other person, to locate said warrant upon the aforesaid five lots of land, as stated in the bill, but has good reason to believe, from the letter of said Buford, marked A, that the late Col. Gibson either located the warrant himself, or caused it to be done for the said Buford. How the complainant became possessed of the patent which was issued to Col. Buford for those five lots, this respondent knows not; that he once saw the patent in the custody of Smith is true, and the circumstance under which he saw will be fully detailed in his answers to the interrogatories to the bill; that the said Johnston pretended to have possession of the said lots is true, as will be more fully stated in the sequel; that he paid the taxes up to the time when this respondent purchased is probably true, this respondent has always so understood, touching the allegations in the bill; that this respondent applied to the said Johnston and the said complainant for the purchase of said lots; that he procured a certified copy of the said patent, and represented to Buford it was the original; that he presented said Buford a writing purporting to be signed by said Wills, certifying Shane and Meigs to be the true owners, and requiring Buford to execute a deed to them, and sundry other allegations not already explicitly answered: this respondent begs leave to refer to his several answers in reply to the interrogatories of the bill, adding further, only, in this place, that in his several negotiations with the said Wills for the purchase of said five lots of land, he made no representations to him whatever touching a prior sale to Johnston, for he knew not, and did not believe, that any such had ever been made, and that his interview with Col. Buford, when he ob-

tained his quit claim deed as before stated, he made no representations other than a true statement of his contract with the said Wills, and gave no false coloring whatever to any part or circumstance connected with the purchase or title of said lands; and the consideration of five hundred dollars mentioned in the deed of quit claim of the said Buford was put in more as matter of form than otherwise, there being no money paid by this respondent to the said Buford, yet that was supposed to be about the amount which Wills had paid Buford for the warrant. In answering the numerous interrogatories contained in the complainant's bill, this respondent can in no way so satisfactorily and perspicuously respond to the multiplicity of points therein suggested, (many of which this respondent is advised are immaterial and impertinent,) as by reciting the interrogatories in their order and at large, and replying to each distinctly; he therefore prays to be indulged in that method. To the first interrogatory, therefore, which is contained in these words: 1st. Whether the defendants, or one of them, and which of them, were not informed previous to their said pretended purchase of the said Wills, that he, the complainant, and the said Johnston, or the said Johnston, were in possession of and claimed title to the said five lots of land, this respondent answers, that as long ago as the year 1806 or 1807 he heard it reported that one James Johnston was a large landholder in the United States' military district; among the lands which he pretended to claim were five hundred acres patented in the name of Col. Abraham Buford, being Nos. 17, 18, 19, 20, and 21, of the 2d quarter 8th township and first range. As to James E. Smith, the complainant, it was not until the year 1815 that this respondent knew there was such a man in existence; it was but a few years subsequent to the period first mentioned that the community at large became alarmed with respect to Johnston's titles, and one general opinion prevailed among all who knew him, that he had no legal titles to any of the lands reported to be his; that this opinion was well founded will fully appear from the following circumstance, of historical notoriety, in Tuscarawas county: In 1802 or '3 Johnston sold to Henry Sills between 200 and 300 acres of land, held by Johnston by the same tenure by which he pretended to hold his other lands; Sills paid a very considerable portion of the purchase to said Johnston, and after solicited him to make a title, but he could not, for he had none to make; the land was then the property of Gen. Starks, and now belongs to his heirs. Sills will now probably be compelled, after a residence of 20 years, spent in toil and labor on the land, to leave it, with the loss of all the money he has paid, and his time and labor; also, in the same neighborhood, and about the same time, Johnston sold 500 acres of land to one Harris, and received $1500 in hand, was repeatedly requested to complete the sale by a deed of conveyance, but without effect, for he himself had no title; the land then was and still is the property of one Thomas Mitchell, of the city of Philadelphia: again, Johnston claimed 400 acres of land adjoining the land now in dispute, and in the year 1808 or 1809, he gave a power of attorney to one John Kinsley to lease it for him; it was accordingly leased, and after the lessee had been in possession one or two years, he was turned out of possession by Henry Laffer, who purchased the land from Doctor McDowell, who was entitled to it by warrant for revolutionary services. After all those acts of fraud and imposition were made manifest, no one acquainted with the facts believed Johnston to have a good title to a single foot of land in the county. To ascertain beyond doubt or mistake in whom the title to the said five lots of

land was vested, this respondent examined all the offices of record where lands in this vicinity were required to be recorded, and could find no title in said Johnston to any lands in Tuscarawas county, nor did he ever know, see, or hear, that the complainant had even a shadow of title to any lands in said county, and he did not then know or believe, nor does he now know or believe, that either said Johnston or Smith had any title or interest whatever in said five lots. Touching the possession of the five lots by Johnston, this respondent recollects seeing the power of attorney above mentioned, under which said Kinsley leased to Henry Knoble the 400 acres, out of the possession of which he was turned by Laffer, the grantee of McDowell, which power of attorney included also the power to Kinsley to lease the five lots now in dispute, and Kinsley under that power leased to the said Knoble (after he was turned out of possession of the other 400 acres as aforesaid) a part or all the five lots, and under that lease the said Knoble took possession, and was in possession when this respondent purchased the said lots, and remained under him for a year or two longer; this is all the knowledge this respondent has of the possession of the said Johnston or the said Smith. 2d. To the next interrogatory, whether the said Shane did not, previous to their pretended purchase of the said Wills, and some time in the year 1814 or 1815, or at some other time, apply to the said Johnston to purchase said lands, and whether he did not make the said Johnston an offer for the said lands, this respondent answers, that in the year 1813 he met Johnston in the highway, between Zanesville and Newark, Ohio, and they entered into a conversation about the lands Johnston pretended to claim in Tuscarawas county: this respondent asked him if he would sell the said five lots, he said he would, his price was then asked, and upon that subject he gave this respondent no satisfaction; and his manner of conversation and looks were such as to confirm this respondent in the opinion he had formerly entertained concerning his pretended title to lands in Tuscarawas county. And at the time of this conversation he had no view or intention of purchasing land of said Johnston, as he was well satisfied, even before that he had no title to the lands he pretended to claim, the inquiries made of him with a view only of drawing from him, if possible, who were the rightful owners of the land he claimed, especially of the five lots. 3d. To the interrogatory, if any, what sum did the respondent offer for said five lots, and at what time, he answers, that he never offered Johnston any sum for the five lots, because he considered that he had no title, the said Johnston having at a time previous, say in 1809 or 1810, sold a part of the five lots to one Casbeer, now a resident of Tuscarawas county, and received from him $200 or 300; and when Casbeer demanded a deed the said Johnston could make no title, but, unlike his conduct towards Sills and Harris, he paid Casbeer back his money without trouble. 4th. To the next interrogatory, whether the said Johnston did not inform the said Shane, and at what time, that complainant was jointly interested with him in said lands, this respondent says, at no time whatever did Johnston tell him that complainant was in partnership with him; on the contrary, the said Johnston, on the 4th of December, 1816, filed his bill in equity on the equity side of the court of common pleas of Tuscarawas county against this respondent, and his co-defendant, claiming the said five lots, in which he does not pretend that the complainant was jointly interested; to which bill this respondent would here again refer. 5th. To the following interrogatory, whether the said Shane did not, previous to his pretended purchase of said Wills, and some time in

the year 1815, or at what time, apply to the complainant in Philadelphia to purchase said lands, and if not, for what purpose did he apply to complainant in Philadelphia, and who informed him that there was such person as the complainant residing in Philadelphia, this respondent answers, in March, 1815, he was in Philadelphia on business, having been previously informed by Sills, in conversation with him concerning his unfortunate purchase of Johnston of some of Gen. Stark's land, as before stated, that he had understood from Johnston that he had a partner by the name of Smith in Philadelphia, but whether it were James Smith, Dick Smith, or John Smith, he did not understand, until he met him at his office in Philadelphia, at the time first mentioned. Being anxious to obtain what information he could on the subject of western lands, as he was himself a dealer in lands, this respondent asked the said Smith, in general terms, if he had western lands to sell; he replied that he had, but would not sell until he could see Col. Johnston, of Ohio: this respondent then inquired whether he or Johnston had possession of the title papers; he replied that he had, and that if this respondent would call at his office the day following he would show him his titles. This respondent called next day, and the said Smith threw down, for his inspection, a bundle or roll of *patents* which had been issued from the office of the Secretary of State of the United States to the officers and soldiers of the revolutionary war. After looking over those patents for some time, this respondent again inquired for his titles, because, in looking over the bundle which had been given him to examine, he could see neither conveyances, assignments, title, bond, or any thing else by which it was possible for him to hold any title to any of the lands mentioned in the patents. He evaded giving any answer to the question. This respondent then inquired of Mr. Smith what constituted a complete transfer of a soldier's warrant at the time those lands were located. To this question he also refused to answer. This respondent then suspected, from the strange conduct of Smith, who held himself out to the world as a vender of lands, that the warrants were put into his hands, perhaps to locate for the officers and soldiers to whom they were granted; that he held the patents barely in trust for the owners, and perhaps fraudulently detained them. 6th. To the interrogatory next in order, which is as follows, whether complainant did not at that time hand to said Shane a number of deeds and patents for lands in the State of Ohio, and whether among the said Shane did not find the patent to the said Buford for the said five lots of land to the bill attached, and whether he did not inquire of complainant if he would sell the said lands, and at what price, and state to complainant that he wished to purchase them, this respondent replies, that at the time above stated he saw among the patents handed to him by Smith the patent of Col. Buford, Gen. Stark, and many others not now recollected, but saw no papers or documents whatever vesting in Smith or Johnston any kind of title whatever, although, as before stated, he asked the said Smith to show him his title papers. Before this respondent asked to see his title papers, or saw the patents which the complainant handed him, he asked him if he would sell, but he did not at any time ask his price, for such an inquiry would have been worse than useless, of a man who had no right or interest to part with. 7th. To the seventh interrogatory, in these words, whether complainant did not inform the said Shane that he had confided the sale of them to said Johnston, and whether said *Johnston* [should be Shane] did not reply he had made proposals to purchase said lands to the said Johnston, but

that they could not agree upon the price, this respondent, answering, says, that the complainant never did tell him that he had confided the sale of those lands to Johnston, but stated that he intended to be out in Ohio, and attend to it himself. Indeed, this respondent had then reason to believe that Smith, had he really owned any in Ohio, would not have confided the sale thereof to Johnston, for he then expressed an opinion that Johnston was a dishonest man, and since that period has publicly asserted the same thing. This respondent never told Smith, the complainant, that he and Johnston could not agree about the price, for he well knew Johnston had no title, and he never spoke with him about the price. 8th. To the interrogatory, whether any thing, and what, passed between the complainant and the said Shane respecting said lands, this respondent begs leave to refer to his answers to the prior interrogatories, where every thing has been stated which he recollects relating to the subject-matter of the interrogatory. 9th. To the next interrogatory, as follows, whether said Shane did not discover at that time among the deeds and papers handed to him by complainant the draught of the deed hereto attached, prepared to be executed by the said Buford to the said Johnston for the said five lots of land, or if he did not see some writing among those papers of that description, this respondent says, that he never saw a blank conveyance prepared to be executed by the said Buford to the said Johnston for the said five lots of land, nor any other paper of that kind or description, nor does he believe that said Smith at that time had any such paper, or that he ever had it until the commencement of the present proceedings against the respondent and his co-defendant. 10th. To the interrogatory, in these words, which follows the last recited, if the said Shane and Meigs, or one of them, and which of them, were not informed, previous to their pretended purchase of said Wills, that the said Wills had sold the said warrant to the complainant and the said Johnston, or to one of them; if not, what were they informed upon that subject, and by whom, this respondent answers, that he never was informed, directly or indirectly, that Wills had sold the warrant to the complainant, or to Johnston, or to any other person; but he knew by Buford's letters, herewith exhibited, that Wills had purchased the warrant, and possessed the equitable interest in the lots, but he knew of no other persons having any title therein. 11th. To the interrogatory, whether said Shane did not apply to the said Wills for the purpose of procuring for him a quit claim of his pretended title to said warrant and lands, this respondent replies, that he applied to Wills for a title to the land, as he believes the said Wills, from the aforesaid letter of Buford, the rightful owner of the same. 12th. To the following interrogatory, viz. whether the said Wills did not inform the said Shane, previous to his said pretended purchase, that he had sold the said land warrant to the complainant and the said Johnston, or to one of them, and whether he did not, to induce the said Wills to make a conveyance of his pretended title to him, represent that the said sale of the said land warrant to the said Johnston was invalid, or what representation did he make to the said Wills on that subject, this respondent answers, that Wills always denied the sale of said warrant to the said Johnston or Smith, or any other person, both in his letters to this respondent and in public declarations, and stated that, if ever Johnston or Smith obtained the warrant from him, it must have been in some of his imprudent moments, when he knew it not; to which this respondent replied, that if such were the truth he would risk the purchase of his equitable interest, for that John-

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ston and Smith could have no valid claim in law or equity, and that he had no doubt if the purchase money was paid to Buford for the warrant he would make good the title for the land, in as much as he had acknowledged in his titles to this respondent that he had sold the warrant to him, (the said Wills,) but that the purchase money was then unpaid: to this Wills assented, and agreed that if this respondent would pay the purchase money of the warrant to Buford, he should have the said Wills's equitable claim to the said five lots, which this respondent agreed to do, and the bargain was thereupon determined, and $1100 afterwards were paid to the said Wills by this respondent in pursuance of said agreement. 13th. To the next interrogatory, in these words, whether the said Shane and Meigs, or one of them, had not information of complainant's title previous to the execution of said deed to them by the said Buford, this respondent answers, that he has never known to this day that complainant or Johnston had a title of any kind to said five lots of land, but he did know previous to the execution of said deed that there was a report in the country that they, or one of them, pretended to hold a claim to said land, but he always supposed it a mere pretence, because no title of theirs was ever on record, nor is there any title of theirs to land which they have pretended to claim in the county of Tuscarawas yet upon record. 14th. To the following interrogatory, whether the said Shane did not present to the said Buford, to induce him to execute the said deed, a writing purporting to be signed by the said Wills, certifying that he, said Wills, had sold the said land, or the said warrant, to the said Shane and Meigs, and directing and requiring said Buford to make them a deed for said land, this respondent answers, that in the year 1815 this respondent called upon Col. Buford at his own house, and asked him if he recollected to have received letters from a person by the name of Shane on the subject of his revolutionary land claim in the United States' military district; he replied that he did; and this respondent then informed him that he was the person, and that, in pursuance of an agreement made with Mr. Wills, in the March preceding, (which agreement is recited in the early part of this answer,) he, this respondent, had called upon him for a deed of said land, and that he was prepared to pay him, for the said Wills, the purchase money of the said warrant: to this he replied, that he had then recently received his pay, and that he was then ready to execute a deed of conveyance, which he did in the form of a quit claim, to Mr. Meigs and this respondent, after some little discussion as to the form of the conveyance, which has already been related. This respondent presented to Buford his letters before referred to, and exhibited with this answer and a certificate from the Commissioner of the General Land Office, describing the numbers of the lots, the section, township, and range, and the date of the patent to him, and these were all the papers this respondent exhibited to him at that or any other time; there was no written agreement between Wills and this respondent about the land until after the execution of the deed from Buford, and then no other than a release, because the consideration money was paid him in hand, except two hundred dollars, for which a note was given, as before stated; and this respondent avers that he never did show to Col. Buford, or pretend to him that he had a certificate from Wills. Wills and this respondent would have executed a written contract concerning said lands, but for the peculiar circumstances under which they met, when the purchase was made by this respondent. He, this respondent, arrived in Petersburg in the mail stage from Richmond about 12 o'clock at night, and Wills was to take the same

stage and start for Norfolk in a few moments; of course the parties had but a few moments to converse on the subject; but it was at that time distinctly and positively agreed between the said Wills and this respondent, that he, this respondent, should be the purchaser, and should go to Buford, pay the purchase money of the warrant, and receive a deed of conveyance. 15th. To the next interrogatory, which is as follows, whether the said writing was in fact executed by the said Wills, or by whom was the same executed; whether the said Shane and Meigs, or one of them, did not know, previous to their making application to the office of Secretary of State for a copy of said patent, that the original was in the hands of the complainant, or of the said Johnston; and whether they or either of them ever applied to complainant, or the said Johnston, for the same, this respondent says, that he has already stated that no written agreement existed between him and the said Wills before the date of the conveyance or quit claim from Buford. This respondent further states, that he knew that the original patent was in the hands of Smith, and he also knew that he could not compel a delivery of it to himself without a suit, which he chose to avoid; he also knew that it was of no benefit to himself, or even to said Smith, except it might assist him to practise deception upon the community; this respondent, therefore, never thought it necessary to make a demand of it, although he was and still is entitled to its custody. 16th. To the following interrogatory, whether they did not procure the certified copy of the said patent, and present the same to the said Buford, for the purpose of inducing him to execute to them a deed for said lands, and whether the said Shane informed the said Buford that it was a copy, and not the original patent, which was so shown to him, or whether the said Buford knew it was only a copy, this respondent answers, that the deed of conveyance or quit claim from Buford to Meigs and himself was executed at the time before mentioned, and was dated on the day of its execution, which is the 15th day of May, 1815; that no copy of said patent was ever obtained by himself or his co-defendant, as this respondent believes, until long after that time; that the only exemplified copy of said patent which Meigs and this respondent obtained from the General Land Office, bears date the 25th day of October, 1816, the day on which it was obtained, and is herewith filed, marked D, and no copy of the original was ever presented to Buford by the respondent, nor were there any false statements made to him of any kind that might induce him to execute a deed wrongfully, but, on the contrary, a strict observance of truth was rigidly maintained throughout the whole transaction. 17th. To the next following interrogatory, and if the said Buford did know it was a copy, how did the said Shane account to him for not producing the original, this respondent replies, that he has already fully stated the whole conversation between himself and Buford, and also the agreement between Wills and himself, in which the answer to this interrogatory is fully given. To the interrogatory, which is in these words, what was the amount paid by the said Shane and Meigs to the said Wills for his assignment, at what time, and in what manner, was the same paid, 18th, this respondent answers, as he has before stated, that $1100 was paid to said Wills for said five lots, $100 of said sum was paid by Adam Johnston, of Coshocton, $800 was paid by this respondent himself, in Zanesville, in cash, and $200 was paid by a due bill, which was taken up in a short time after it was given; these sums were paid and due bill given some time in the summer season of 1815. 19th. In answer to the interrogatory, in these words, what assurance, me-

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morandum, or writing, did the said Shane and Meigs, or either of them, receive from the said Wills at the time of their pretended purchase of his title, or afterwards, this respondent says, that the memorandum of writing which he obtained from Wills was in the nature of a release of all his claim to said land, and was executed by the said Wills some time in the last of September or first of October, 1815; no other writing did this respondent ever receive of the said Wills touching the title of said land. 20th. To the interrogatory, where is such memorandum, assurance, or writing, and that they may, if in their possession or power, produce and set forth the same, this respondent, in answering, says, that the release which he received from the said Wills, as mentioned in the answer to the foregoing interrogatory, was delivered by this respondent to John M. Goodenow, Esq., his counsel, in a case in the court of common pleas of Tuscarawas county, wherein John S. Wills was plaintiff, and this respondent was defendant, and that he believes he has not had it in his possession since, that he has made diligent search for it, and cannot find it, and knows not where it is. 21st. To the interrogatory, in these words, whether there was any, and if any, what consideration paid by the said Shane and Meigs, or either of them, to the said Buford for the said deed, and was the consideration expressed in said deed, or any part of it paid to the said Buford, or in any way, or required of him to be paid, and was not the said consideration procured to be inserted in the said deed by the said Shane, without the discretion of the said Buford, this respondent answers, that although he has already responded to this question, he further adds, there was no consideration paid by him to the said Buford when the said conveyance was executed to Meigs and himself, but this respondent stated to said Buford that he was prepared to pay the consideration money due from said Wills to him on account of the purchase of the warrant, which, by the said Buford's letter to him, dated June 28th, 1814, appeared to be due and unpaid, and which, by agreement between Wills and this respondent, he was to pay for the said Wills, and was to be a part of the consideration for his equitable estate in the said land; at the same time this respondent stated his readiness, as aforesaid, to the said Buford; he replied that he had already received his pay, and said he was willing to execute to me his quit claim for the land. This respondent himself proposed the sum of five hundred dollars, the consideration mentioned in said deed, supposing that to be about the sum paid by the said Wills for the warrant. 22d. To the following interrogatory, that the said Shane and Meigs may severally set forth and declare what was the date of the said certificate produced by the said Shane to the said Buford, at or about the time of the execution of the said deed, by whom signed, and what were its contents, and with whom was the said certificate deposited after the said deed was executed, and in whose possession is the same at this time, and if in the possession or power of the said Shane and Meigs, or either of them, that they produce and set forth the same, this respondent replies, as he has before replied, that he produced to the said Buford no certificate from the said Wills whatever, and did not exhibit to the said Buford any papers or writing other than his letter before referred to, excepting a certificate from Josiah Meigs, Commissioner of the Land Office, as before mentioned, which was of the following import, and as near as he can remember, in these words: I do certify on the 6th day of August, 1801, a patent issued to Col. Abraham Buford for 500 acres of land, being lots No. 17, 18, 19, 20, and 21, of the 3d quarter 8th township and first

range of the United States' military district. 23d. To the interrogatory, in these words, whether the said Buford did not refuse to execute a deed to said Shane and Meigs unless the said Shane should produce a certificate that they were the true and rightful owners of said lots of land by lawful purchase, derived through his agent, the said Gibson, this respondent, answering, says, that after he made the statements to Col. Buford which have hereinbefore been set forth, he in no instance showed any disinclination to make a deed of quit claim; and this respondent is now well assured, in his own mind, that Col. Buford never at any time mentioned the name of Gibson to him, except in his letters herewith exhibited, in which he disclaims all knowledge of Col. J. Johnston and Smith; this respondent believes the said Buford never had heard even the name of Gibson; he said nothing at the time of executing the deed, but spoke of Wills as the only purchaser of the warrant, and appeared entirely satisfied that Meigs and this respondent were the rightful purchasers from Wills. 24th. To the interrogatory following, whether the said Shane and Meigs, or either of them, had any, and what, knowledge of the complainant's claim, or the claim of said Johnston, from the said Wills, or any other person, and whether the said Shane disclosed such their knowledge to the said Buford, at or before the time of receiving from him the said deed, this respondent answers, as he has already before answered, that he never had any knowledge of any legal or equitable claim of the said Smith or the said Johnston to the said five lots of land, nor did he ever understand that Wills had sold the warrant to the said Johnston, as stated in the bill, until long after the execution of the deed by Buford; of course he could not and did not communicate such knowledge to him. 25th. To the last interrogatory, whether, in making their pretended purchase from said Wills, and in procuring their said deed from the said Buford, the said Shane did not act as the agent and attorney in fact for the said Meigs, this respondent says, that he transacted all the business in purchasing the said land as a partner and joint owner with the said Meigs, and was paid by him, for his labor and expense, one moiety thereof. This respondent denies all combination and confederacy in the said bill charged, and all fraud and intention of fraud, without that, that any other matter or thing material or necessary for this respondent to make answer unto, and herein already well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this respondent. All which matters and things this respondent is ready to aver and prove as this honorable court shall direct, and, having answered, humbly prays to be hence dismissed with his costs and charges in that behalf most wrongfully expended.

JOHN M. GOODENOW,
Counsel for the defendant Shane.

State of Ohio, Muskingum county, ss.

Before Samuel Thompson, Esq., a justice of the peace of said county, personally came the above respondent, Abraham Shane, who, on his solemn oath, deposeth and saith, that the matters and things stated in the foregoing answer, so far as they are stated of his own knowledge, are true, and so far as stated from hearsay, he believes them to be true.

Sworn before me, Nov. 29th, 1823.

SAMUEL THOMPSON, *J. P.* [SEAL.]

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Exhibit referred to in the foregoing answers, marked A.

SCOTT COUNTY, KY., *Aug.* 20, 1812.

Mr. SHANE. Sir: Your letter bearing date the 20th of June stopped in the Lexington postoffice, where, by mere accident I stopped a few days ago, and got it. Letters to me generally stop at the Georgetown postoffice, being in the county where I live. In answer to said letter, I believe I do not own any lands in the United States' military district. Col. Gibson, late auditor for the State of Ohio, located, or rather undertook to locate, those lands for me. I afterwards sold the claims to him, or a part of them to him and his son-in-law, John S. Wills. From them I presume you may get the information you require.

I am, with due respect,
Your humble servant,
A. BUFORD.

SCOTT COUNTY, KY., *June* 28, 1814.

Mr. SHANE. Sir: It would give me pleasure, was it in my power, to give you any satisfactory information respecting the lands you mentioned in your letter to me of the 18th inst. I apprehend from your letter that Col. J. Johnston is an inhabitant of the State of Ohio. If so, I have no knowledge of him; my recollection of those lands is very faint. I believe those lands, or a part of them, were located in my name, but I know not who they were granted to. I sold them to Col. Gibson, but I do not recollect who I made the assignments to, perhaps to John S. Wills, as he was made paymaster to me for them, but the price not yet received. I believe I have no claim to any of those lands, or can I say any thing as to their value. By searching the different offices I should suppose you might trace to the title.

I am, sir, with due respect, yours, &c. &c.
A. BUFORD.

This indenture, made this fifteenth day of May, in the year of our Lord one thousand eight hundred and fifteen, between Abraham Buford, and Martha Buford, his wife, of the county of Scott, and State of Kentucky, of the one part, and Return Jonathan Meigs, junior, and Abraham Shane, of the counties of Washington and Tuscarawas, and State of Ohio, of the other part, witnesseth, that the said Abraham Buford, and Martha his wife, for and in consideration of the sum of five hundred dollars, current money of the United States of America, to them in hand paid, the receipt whereof they do hereby acknowledge, and for ever acquit and discharge the said Return Jonathan Meigs, junior, and Abraham Shane, their executors and administrators, have granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, and confirm, unto the said Return Jonathan Meigs and Abraham Shane, their heirs and assigns, for ever, five lots or parcels of land, lying and being in the county of Tuscarawas, and State of Ohio, on the waters of the Muskingum river, containing, by estimation, one hundred acres each, being lots numbered seventeen, eighteen, nineteen, twenty, and twenty-one, in third quarter of the eighth township of the first range in the United States' military district, and for which lots the said Abraham Buford obtained a patent bearing date the sixth day of August, 1801, reference being

thereunto had, as the same is on record in the General Land Office, will more fully and at large appear, together with all improvements, profits, and appurtenances whatsoever, to the said premises belonging or in any wise appertaining: to have and to hold the lands hereby conveyed, with all and singular the premises, and every part and parcel thereof, with every of the appurtenances, unto the said Return Jonathan Meigs, jr., and Abraham Shane, their heirs and assigns, for ever; and the said Abraham Buford, and Martha his wife, for themselves, their heirs, executors, and administrators, do covenant, promise, and agree, to and with the said Return Jonathan Meigs, junior, and Abraham Shane, their heirs and assigns, that the land before mentioned now is, and for ever hereafter shall remain, free of and from all former and other gifts, grants, bargains, sales, dowers, right and title of a dower, and all other incumbrances whatsoever, done or suffered to be done by them, the said Abraham Buford, and Martha his wife, and that they will warrant and defend the same against the claim or claims of all and every person or persons whatsoever, claiming by, from, through, or under them and their heirs, but from the claim of no other person or persons whatsoever, this only being intended to be a release or quit claim; and in case the said land or any part thereof should be lost, the said Abraham Buford is not to be liable for any part of the purchase money.

In witness whereof, they, the said Abraham Buford, and Martha his wife, have hereunto set their hands and seals, the day and year first within written.

A. BUFORD. [SEAL.]
MARTHA BUFORD. [SEAL.]

Signed, sealed, and delivered, in the presence of us,

State of Kentucky, Scott county, sct.

I, Cary L. Clarke, clerk of the said county court, certify that the foregoing deed was day before me acknowledged by the said Abraham Buford, and Martha his wife, as their act and deed, and the said Martha being by me examined, separately and apart from her husband, freely and voluntarily relinquished her right of dower to the premises therein mentioned.

In testimony whereof, I have hereunto set my hand, and seal of the said county court, this fifteenth day of May, 1815.

CARY L. CLARKE, *C. S. C. C.* [L. S.]

Acknowledged by Mrs. Buford, and dower relinquished, May 15th, 1815, and by Col. A. Buford.

State of Ohio, Tuscarawas county, ss.

Recorder's Office, November the 25th, 1815. Received and recorded December the 25th, 1515, in record book, volume 2, page 500, &c.

Attest: JAMES CLARKE, *Recorder.*

To the honorable the judges of the court of common pleas of Tuscarawas county, in the State of Ohio, in chancery sitting, humbly complaining, sheweth unto your honors, your orator, James Johnston, of Franklin county, in said State, that, on or about the ninth day of February, in the year of our Lord one thousand eight hundred, your orator, then being in the city of

Philadelphia, happened in company with one John S. Wills, who held a military land warrant in the name of one Abraham Buford, now of the State of Kentucky, and proposed to sell the same to your orator; and your orator in fact purchased said warrant of said Wills, for the sum, as nearly as your orator recollects, of one hundred and sixty and two-thirds dollars, and the said Wills then and there, for the consideration aforesaid, transferred said warrant to your orator by delivery; and your orator further charges, that he is informed and believes that said Buford sent said warrant, together with a power of attorney, duly executed, to one Thomas Gibson, then of the territory northwest of the river Ohio, now discovered to be, by him, the said Gibson, sold, and that by virtue of said power, which by him and accident is lost, said Gibson for a valuable consideration sold said warrant to said Wills, in the name of said Buford; and your orator further charges, that some time after the assignment of said warrant to your orator by said Wills, your orator located lots number seventeen, eighteen, nineteen, twenty, and twenty-one, in the third quarter of the eighth township in the first range of the tract appropriated for satisfying warrants for military services, and afterwards received a patent for the same, in the name of said Buford, from the President of the United States, dated the 6th day of August, A. D. 1801, which patent, under the seal of the United States, hereto attached, your orator prays may be taken as a part of this his bill of complaint; and your orator further charges, that after he had received a patent as aforesaid, in the name of the said Buford, one Abraham Shane, of said Tuscarawas county, whom your orator prays may be made defendant to this his bill of complaint, applied to your orator to know whether your orator would sell the lots of land aforesaid, and made your orator an offer for the same, which was rejected; and your orator further sets forth, that after the proposition of the said Shane to purchase said lots, and your orator's refusal to accept the offer, said Shane, combining and confederating with one Return Jonathan Meigs, jr., of the city of Washington, in the District of Columbia, (whom your orator prays may be also made party defendant to this his bill of complaint,) to cheat, cozen, and defraud your orator, applied to the said John S. Wills, and purchased his supposed claim, interest, and title, in said lots of land, and paid and secured to be paid to the said Wills therefor, as your orator is informed and believes, the sum of eleven hundred dollars, a price, admitting the lots of land aforesaid to be the property of the said Wills, much below its real value; and your orator further charges, that said Shane, in behalf of himself and said Meigs, purchased the supposed claim of said Wills with a full knowledge of all the circumstances as aforesaid, as to the sale by said Buford, through his attorney in fact, said Gibson, to said Wills, and as to said Wills's transfer of said lots to your orator as aforesaid; and your further sets forth, that the said Shane and Meigs, combining together as aforesaid, and well knowing that the said Wills had long before disposed of his claim to said land, by transferring said warrant to your orator for a valuable consideration as aforesaid, and well knowing the fact to be that the said Buford had equitably divested himself of the right to convey said lots of land to any person other than your orator, procured, as your orator has been informed and verily believes, a certified copy of said patent for said lots issued to your orator in the name of said Buford, and proceeded to the residence of said Buford, in the State of Kentucky, and by false and fraudulent representations, and by presenting to said Buford an order to secure and cover their fraudulent designs, a certain false certificate purport-

ing to have been signed by said Wills, and another purporting to be a certificate directing and requesting said Buford to execute a deed for said lots to said Shane and Meigs, they being the true and lawful owners of said lands by virtue of the power of attorney from said Buford to Gibson, and by virtue of the sale from said Gibson under said power to said Wills, procured a deed of said lots to be executed to them, the said Shane and Meigs, from and by the said Buford; and your orator further showeth unto your honors, that said Buford, confiding in the statements of the said Shane and Meigs, or one of them, and taking said certificate to be true and genuine, and not false and fraudulent, did execute to said Shane and Meigs a deed to said lots of land, without any kind of consideration paid him, Buford, by the said Shane and Meigs, or either of them, but merely under a belief that said Shane and Meigs were the true owners of said land, by virtue of the sale of the warrant aforesaid through Gibson to Wills, and from Wills to said Shane and Meigs; and your orator further sets forth, that said deed from said Buford, so as aforesaid obtained, was dated on the fifteenth day of May, A. D. 1815, and set forth the consideration as paid by said Shane and Meigs to said Buford to be five hundred dollars, when your orator in fact charges the truth to be, that not one cent was paid said Buford by said Shane and Meigs, or either of them; and your orator prays that a certified copy of said deed from said Buford to said Shane and Meigs, dated on the day and year aforesaid, hereto attached, may be taken as part of this his bill of complaint; and your orator having paid the full amount stipulated to be paid between your orator and said Wills to said Wills, whom your orator then believed and still believes had the equitable title to said lots of land, and having been admitted to be the owner of said land by said Shane, application to your orator to purchase your orator's title to said lots, and after the honest disclosure made by said Wills to said Shane before the sale by said Wills to said Shane and Meigs of your orator's interest and title to said lots, and believing and still believing that said Buford had received through his attorney in fact, said Gibson, full and satisfactory compensation for said warrant from said Wills, had good reason to expect that said Buford would at any time execute a deed to your orator for said lots, in pursuance of the sale by said Gibson as aforesaid, and as the assignee of the said Wills for a valuable consideration, and more particularly in as much as your orator had procured said patent, and had enjoyed quiet and peaceable possession of said lots, and had paid taxes thereon for a number of years.

Yet now, so it is, may it please your honors, that the said Shane and Meigs, having entered into a combination and confederacy with each other, and with divers other persons as yet unknown to your orator, whose names, when discovered, your orators pray may be inserted herein with apt and proper words to charge, and every of them as defendants, to defraud your orator of the premises, and they having formed a design to defeat your orator of the benefit of the purchase and money advanced by him to said Wills, and to deprive your orator of his lots of land so as aforesaid honestly purchased, the said Shane and Meigs refuse, and persist in refusing, to convey said land to your orator, and to give some countenance to the august pretensions and refusals of them, the said Shane and Meigs, they, the said defendants, give out that the legal title of said lots of land being in them, the said Shane and Meigs, by virtue of the said deed to them from said Buford, they, the said Shane and Meigs, are not, nor is either of them, under any obligation to convey said premises to your orator, they, the said defendants,

further giving out and pretending that they have gotten the advantage in law of your orator, and that they are determined to keep it; all which actions and doings, pretences and designs, of the said confederates are contrary to equity and good conscience, and tend to your orator's great wrong and injury.

In tender consideration whereof, and for as much as your orator cannot compel a conveyance of the aforesaid lots of land from the said Shane and Meigs, or obtain due execution of the contract with said Wills, or to be otherwise relieved in the premises, than by the aid and assistance of this honorable court, to the end therefore, and in order that the said Shane and Meigs, and their confederates, when and as they shall be discovered, may, upon their several and respective corporal oaths, true and perfect answers make to all and singular the premises hereinbefore set forth, as if the same were here again repeated and particularly interrogated to be answered unto, and more particularly that the said Shane and Meigs may particularly set forth whether they, or one of them, on behalf of both, before they, or one of them, made the pretended purchase of the lots aforesaid of said Wills, did not apply to your orator to purchase of him said lots of land; if they, or one of them, did apply to your orator, at what time; whether they, or one of them, before the said purchase of said Wills, did not make your orator an offer for said lands; if they, or either of them did, what sum, and at what time; whether the said Shane and Meigs, or one of them, had notice of your orator's claim to said lands from said Wills, or some other person, before the purchase from said Wills; whether they, the said defendants, or one of them, had not information of your orator's title previous to Buford's executing a deed to them for said land; what was the amount paid by said Shane and Meigs to said Wills for his claim; at what time, and in what manner, was the sum paid; what assurances or memorandum did they, the said Shane and Meigs, or either of them, receive from said Wills at the time of the purchase from Wills of his title and claim, or afterwards; and if any, set forth; whether there was any, and if any, what consideration was paid by said Shane and Meigs, or either of them, to said Buford for his claim; was the amount set forth in said deed to Shane and Meigs, the true consideration by them paid said Buford; that they, the said Shane and Meigs, may severally set forth and say what was the date of the certificate produced by said Shane and Meigs, or one of them, at or about the time of the execution of the deed from said Buford to Shane and Meigs, by whom signed, and what were its contents; and if such certificate did exist, with whom was it deposited at and after said deed from Buford to Shane and Meigs was executed, and in whose possession is said certificate at this time; if in the possession of Shane or Meigs, set the same forth; whether said Buford did not refuse to make a deed to Shane and Meigs until they, or one of them, produced a certificate purporting to be a true certificate that said Shane and Meigs, or one of them, were the true and rightful owners of said lots of land by bona fide purchase from the assignee of Gibson, Wills, or some other person, through said Gibson; whether said Shane and Meigs, or either of them, at or before the execution of said deed by Buford to them, had knowledge of your orator's claim from Wills, or any other person, and whether they, or either of them, disclosed the fact to said Buford at or before the time of receiving from him their deed; and your orator prays that said Shane and Meigs may be obliged to convey to your orator the lots of land aforesaid, or so much thereof as they may be found to have therein the title at law, and for such part thereof as may appear to your

honors to have been sold or conveyed since the said Shane and Meigs received the legal title from said Buford to purchasers, without notice that they, the said Shane and Meigs, may be decreed to pay your orator the amount of such purchase money or proceeds of the sale of such part, with legal interest thereon, from the day of sale, until the decree, or the value of such part as may have been sold as aforesaid, without the notice at the time of making such decree, and that your orator may receive such other and further relief in the premises as the nature of his case requires, and as shall be agreeable to equity and good conscience; and your orator prays writs of subpœnas and publication, agreeably to the rules of your honorable court, may it please your honors, &c.

JAMES JOHNSTON.

State of Ohio, Tuscarawas county, ss.

I do hereby certify that the foregoing is truly copied from the original bill in chancery, filed in the court of common pleas of said county, sitting as a court in chancery, December 4th, 1816, wherein James Johnston is complainant, and Abraham Shane and Return Jonathan Meigs, jr., are respondents.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at New Philadelphia, the 19th day of August, A. D. 1823.

GEORGE W. CANFIELD, [L. S.]
Clerk C. C. P. T. C.

Thomas Jefferson, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that in pursuance of the act of Congress, passed on the first day of June, 1796, entitled "An act regulating the grants of the land appropriated for military services, and for the society of the united brethren for propagating the gospel among the heathen," and of the several acts supplementary thereto, passed on the second day of March, 1799, and on the eleventh day of February, and first day of March, 1800, there is granted unto Abraham Buford, a colonel of the late army of the United States, in consideration of his military services, five certain tracts of land, estimated to contain each one hundred acres, being lots numbered seventeen, eighteen, nineteen, twenty, and twenty-one, in the third quarter of the eighth township in the first range of the tract appropriated for satisfying warrants for military services, surveyed and located in pursuance of the acts above recited to, to have and to hold the said described tract of land, with the appurtenances thereof, unto the said Abraham Buford, and to his heirs and assigns, for ever, subject to the conditions, restrictions, and provisions contained in the said recited acts.

In witness whereof, the said Thomas Jefferson, President of the United States of America, hath caused the seal of the said United States to be hereunto affixed, and signed the same with his hand, at the city of Washington, the sixth day of August, in the year of our Lord 1801, and of the independence of the United States of America the twenty-sixth.

TH. JEFFERSON. [L. S.]

By the President:
JAMES MADISON, *Sec'y of State.*

Recorded in vol. 1, page 362.

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General Land Office.

I certify that the within is a true copy from the records of the Department of State, transferred to this office.

In testimony whereof, I have hereunto subscribed my name, and caused to be affixed the seal of this office, at the city of Washington, this twenty-fifth day of October, in the year one thousand eight hundred and sixteen.

JOSIAH MEIGS, *Commissioner.* [L. S.]

Circuit court of the United States for the seventh circuit and State of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS. } *In chancery.*

The separate answer of Return J. Meigs to the bill of complaint of James E. Smith against Abraham Shane and the said Return J. Meigs; the respondent, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception to the many insufficiencies, uncertainties, misstatements, and other defects in the said complainant's bill of complaint, for answer thereto, or to so much thereof as this respondent is advised to be material or necessary for him to answer, says, that previous to the actual purchase of the lots of land in the complainant's bill mentioned, by the said Shane and this respondent, of the said Abraham Buford, through John S. Wills, this defendant never knew, nor was he informed, that the said James E. Smith and the said James Johnston, or either of them, were or ever had been in possession of the said lots of land, or any part thereof, or that the said Smith and Johnston, or either of them, claimed or pretended to claim any right to the said land, or any part thereof; this defendant, however, admits, that before the purchase was made by said Shane and this defendant, he understood that the original patent for the said land, granted by the President of the United States to the said Buford, was in the possession, or had been in the possession, of a Mr. Smith, of Philadelphia, but at the same time understood that the said Smith had no title to the said land; this defendant further says, that as to any transaction which might have taken place between the said Shane and the said Johnston, or the said Shane and the said Smith, in Philadelphia, relative to any offer to purchase the said land of them by the said Shane, or either of them, or of any pretended purchase of said Wills, this defendant knows nothing.

This defendant also denies that he ever knew or was informed that the said Wills ever sold the said warrant to the said Smith and Johnston, or to either of them, or that the said Wills had authority so to do; this respondent further says, that he had no knowledge or information, before the execution of the deed made by said Buford to the said Shane and this defendant, that the said Smith and Johnston, or either of them, had any title or claim to the said lots of land, nor has he had any such information since, except what is derived from what is set forth and alleged in the complainant's bill of complaint; this defendant also denies that he had any knowledge or information that any inducement was held out to the said Buford to execute the deed of said lots of land to the said Shane and this defendant, and as to any certificate, writing, assurance, or memorandum, made by the said Wills, and presented to the said Buford, to induce him to execute the said deed, this defendant has no knowledge or information; this defendant admits that

he did know that a certified copy of the original patent for the said lots of land was obtained from the proper department, and that previous to the obtaining of the same this defendant had been informed that the original patent was in the possession of a Mr. Smith, in Philadelphia, as this defendant has hereinbefore stated; and this defendant further states, that he never did apply to said Smith and Johnston, or to either of them, for the said patent, nor does he know of any application having ever been made to them, or either of them, for the said patent by said Shane; and this defendant denies that he was ever informed that the said Buford refused to execute a deed of said lots of land to the said Shane and this defendant, unless the said Shane would produce a certificate that they were the true and lawful owners of said lots of land, derived through his, the said Buford's, agent, the said Gibson; this defendant also denies that he ever understood, or was informed, that the said Gibson had any authority to sell or transfer the said land warrant; and this defendant, further answering, says, that he understood and believes that the said Shane paid to the said Wills, on account of this deponent, five hundred dollars for the said lots of land; and this defendant further states, that he was jointly interested with the said Shane in the purchase of the said lots of land, and in that particular purchase the said Shane acted in behalf of this defendant; and this deponent solemnly denies any contrivance and confederation with the said Shane to injure, oppress, or defraud the said complainant, without that any other matter or thing in the complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby set forth, well, truly, and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall award, and he humbly prays that the said complainant's bill of complaint may be dismissed, and that the reasonable cost and charges of this defendant in this behalf most wrongfully sustained be adjudged to him.

R. J. MEIGS.

The State of Ohio, Washington county, ss.

Marietta, December eighth, 1823. Return J. Meigs, who has signed his name to the foregoing answer, personally appeared before me, one, an acting justice of the peace in and for the county aforesaid, and made solemn oath that the foregoing answer, and the matters and things therein contained, so far as he has related from his own knowledge, are true, and so far as he has related from the information obtained from others, he verily believes to be true.

In witness whereof, I have hereunto set my hand and seal, the day and year above written.

JAMES M. BOOTH, *Justice of the Peace.* [L. S.]

The State of Ohio, Washington county, ss.

As clerk of the court of common pleas, within and for said I do hereby certify that James M. Booth, Esquire, who hath signed his name to the foregoing written certificate, was at that time and now is an acting justice of the peace within and for said county, duly elected commissioner, and qualified agreeably to law, and that full faith and credit are and ought to be given to all things by him thus certified, as well in courts of justice as elsewhere.

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In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Marietta, in said county, this eighth day of December, Anno Domini eighteen hundred and twenty-three.

GEO. DUNLEVY, *Clerk*. [L. S.]

And thereupon this cause was continued. Afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the months of February, March, April, May, and June, this cause was continued.

And afterwards, to wit, at the July term of said court, A. D. 1824, this cause was further continued.

And afterwards, to wit, at rules held in the clerk's office of said court in the months of August, September, October, and November, in the year last aforesaid, this cause was continued.

And afterwards, to wit, at the January term of said court, A. D. 1825, came again into court here the parties aforesaid. The defendant's attorney agrees to waive all informality as to the notices and authentication of the depositions taken by complainant; and thereupon this cause is continued.

And afterwards, to wit, at the June term of said court, A. D. 1825, the complainant suggests the death of the defendant, Meigs, and leave is granted him to file a bill of revivor against the heirs of said Return J. Meigs.

And afterwards, to wit, at the January term of said court, A. D. 1826, on motion, and the court being satisfied of the death of Return J. Meigs, one of the defendants in this cause, leave is granted to the complainants to file a bill of revivor; whereupon the said complainant, by G. Swan, Esq., his solicitor, filed his said bill of revivor, making Sophia Meigs and Mary Ann Jackson parties defendant, to wit:

To the honorable the judges of the circuit court of the United States for the seventh circuit and district of Ohio, humbly complaining, showeth unto your honors, your orator, James E. Smith, a citizen of and resident in the city of Philadelphia, in the State of Pennsylvania, that your orator, on the 13th August, in the year of our Lord one thousand eight hundred and twenty-two, exhibited his bill of complaint unto this honorable court against Abraham Shane and Return J. Meigs, among other things praying the order and decree of this honorable court that the said Shane and Meigs convey to your orator lots number seventeen, eighteen, nineteen, twenty, and twenty-one, in section number three of township number eight in range number one of the United States' military district, lying in the now county of Tuscarawas, and State of Ohio, or so much of said five lots as they may be found to have therein, and for such parts thereof as might appear to your honors to have been sold and conveyed by the said Shane and Meigs to bona fide purchasers without notice, and praying that the said Shane and Meigs might also be decreed to pay to your orator the amount of the purchase money, and proceeds of such parts, and the interest thereon, or the value thereof; to which bill, the said defendants, Shane and Meigs, (being served with process of subpœna,) appeared, and severally put in their answers thereto, and the cause was set down for hearing, and continued from term to term until the January term, eighteen hundred twenty-four, as in and by the said bill, answers, and proceedings thereupon had, remaining as of record in this honorable court, reference being thereto had, may more fully and at large appear.

And your orator further showeth unto your honors, that before any other proceedings were had in the cause, to wit, on or about the twenty-ninth day

of March, eighteen hundred and twenty-five, the said Return J. Meigs died, by means whereof the said cause and proceedings became and are abated; and your orator further showeth unto your honors, that the said Return J. Meigs died intestate, leaving Mary Ann Jackson, late Mary Ann Meigs, and late the wife of Jackson, deceased, residing in the State of Virginia, his sole heir; and your orator further showeth, that letters of administration were issued to and taken out by Sophia Meigs, upon the estate of the said Return J. Meigs, since his decease, from the court of common pleas of the county of Washington, State of Ohio, who is duly qualified to act in the premises; and your orator is thereby entitled to have the same benefit and relief against the said administratrix, Sophia Meigs, and the said Mary Ann Jackson, as your orator should or might have had against the said Return J. Meigs, deceased.

To the end, therefore, that the said suit and proceedings may stand revived, and be in the same plight and condition against the said Sophia Meigs, administratrix as aforesaid, and the said Mary Ann Jackson, sole heir of Return J. Meigs, deceased, as the same were at the death of the said Meigs, and that your orator may have the same benefit thereof, or that the said Sophia, administratrix as aforesaid, and the said Mary Ann, may show good cause to the contrary, may it please your honor to grant unto your orator your writ of subpœna, to be directed to the said Sophia Meigs, commanding her, under a certain pain therein to be mentioned, to be and appear before your honor in this honorable court, next to be holden at Columbus, within and for the said district of Ohio, on the day of June next, and this said Mary Ann Jackson, being a resident in and inhabitant of the Commonwealth of Virginia, that an order of publication, according to the practice of this court, may be granted as to said Mary Ann; that the said Sophia and the said Mary Ann may make answer to this your orator's bill of revivor, and to stand to and abide such order and decree therein as to your honor shall seem just and reasonable; and your orator, in duty bound, will ever pray, &c.

G. SWAN, *Solicitor for comp't.*

And it appearing to the court that said defendants are not resident of this State, it is ordered that notice of the pendency of this suit be given, by publishing the same in the Ohio State Journal and Columbus Gazette, a newspaper printed in the town of Columbus, in this district, at least nine weeks, successively, previous to the next term of this court, and a further notice, that unless the said defendants appear at the next term, and plead answer or demur to the bill in this cause, the same as to them will be taken as confessed, and the matters and prayer thereof will be decreed accordingly; and, thereupon, this cause was further continued.

And afterwards, to wit, on the 30th day of March, A. D. 1826, the following writ of subpœna issued out of the clerk's office of said court, to wit:

The United States of America, district of Ohio, set.—To the marshal of the said district, greeting:

We command you to summon Sophia Meigs, administratrix of Return J. Meigs, deceased, a citizen of and resident in the State of Ohio, if she be found in bailiwick, to appear before the judges of the circuit court of the United States for the 7th circuit, and district of Ohio aforesaid, at Columbus, on the first Monday in the month of June next, to answer James E. Smith, a

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citizen of and resident in the State of Pennsylvania, of a bill of revivor by him against you exhibited, and this you shall in nowise omit, under the penalty of the law, and have then there this writ.

Witness the honorable John Marshall, chief justice of the United States, this 30th day of March, 1826, and in the 50th year of the independence of the United States of America.

Attest: WM. KEY BOND, *Clerk.*

And afterwards, to wit, at the July term of said court, A. D. 1826, came into court here the marshal, and made return of the aforegoing writ of subpœna, with the following endorsements thereon, to wit:

Served this by a copy of the same, and by handing therewith a certified copy of the original bill.

J. C. BRODERICK, *D. M.*

And thereupon this cause was further continued.

And afterwards, to wit, on the first day of September, A. D. 1826, came Sophia Meigs and Mary S. Jackson, and filed their answers to the bill of complaint exhibited against them in the premises aforesaid, as follows, to wit:

The joint answer of Sophia Meigs, of Marietta, Ohio, widow and administratrix of Return Jonathan Meigs, late of the same place, deceased, and Mary Jackson, of Clarksburgh, in the State of Virginia, daughter and only heir of the said Return Jonathan Meigs, deceased, to the bill of complaint of James E. Smith, exhibited in the circuit court of the United States for the seventh circuit, and district of Ohio, against Abraham Shane and the said R. J. Meigs, and revived against them, the said respondents, since the decease of the said R. J. Meigs, the said defendants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the complainant's said bill of complaint containing, and also saving and reserving, and in nowise waivering, by this their answer, all benefit of exception to the sufficiency of the complainant's case, as set forth in and by his said bill as a ground for the relief which he seeks, and praying that the benefit of all such exceptions may be reserved to them at the hearing, for answer thereunto, or unto so much thereof as these defendants are advised it is material for them to make answer unto, they answer and say, that they have no personal knowledge of the matters and transactions set forth and alleged in the complainant's said bill; they therefore cannot say whether the allegations of the complainant contained in his bill are or are not true, but of the facts alleged by him in support of his claim, so far as the same may be material or effectual, they require of him strict proof.

They have been informed, and understood generally, that the said R. J. Meigs, in his lifetime, with the said Abraham Shane, purchased a tract of land in the county of Tuscarawas, of a Col. Buford, of which respondents believe they (the said Shane and Meigs) have been subsequently in the possession, but of the circumstances of the purchase these respondents had no knowledge; they, however, say, that they find among the papers of the said R. J. Meigs, deceased, along with a copy of the complainant's bill, a paper in his handwriting purporting, and which they believe, to be an answer to the complainant's bill, made by the said R. J. Meigs in his lifetime, but which does not appear to have been filed in the cause, and which paper, or answer, (the same appearing to have been sworn by him,) with a copy of

the deed from the said Abraham Buford, in the bill named, to the said R. J. Meigs and the said Abraham Shane, they pray may be taken and received as parts of this their answer.

And these defendants humbly submit to the consideration of this court, whether the complainant, upon his own showing, were the facts alleged and complained of by him in support of his claim true, which they in nowise admit, be entitled to the aid of this court, and the relief which he seeks, as against these defendants, upon and by reason of a mere parol transfer of an uncertain and indefinite interest or right, or a transfer merely by delivery of a military land warrant; more especially as it appears, by his own showing, that he had long slept upon his supposed right without any exertion or proper diligence to acquire the legal title, or even written evidence of an equitable title from the patentee, if any such he was entitled to.

And these defendants having answered, so far as they are advised it is material for them to answer, the matter of the complainant's bill, pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

SOPHIA MEIGS.
MARY S. JACKSON.

The State of Ohio, Washington county, ss.

Personally appeared before the subscriber, a justice of the peace in and of the said county, Mrs. Sophia Meigs, and made oath that the matters stated in the foregoing answer, (subscribed by her,) as of her own knowledge, are true, and those stated as the knowledge of others she believes to be true.

SOPHIA MEIGS.

Sworn and subscribed before me, at Marietta, this 10th day of May, 1826.
DAN'L H. BUELL, *J. P.*

The State of Virginia, Harrison county, ss.

Personally appeared before the subscriber, a justice of the peace in and of the said county, Mrs. Mary S. Jackson, and made oath that the matters stated in the foregoing answer, (subscribed by her,) as of her own knowledge, are true, and those stated as of the knowledge of others she believes to be true.

MARY S. JACKSON.

Sworn and subscribed to before me, at Clarksburgh, this 13th day of May, 1826. DANIEL KINCHELOE, *J. P.*

Circuit court of the United States for the seventh circuit, and district of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS. } *In chancery.*

The separate answer of Return J. Meigs to the bill of complaint of James E. Smith against Abraham Shane and the said Return J. Meigs. This respondent, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception to the many insufficiencies, uncertainties, misstatements, and other defects in the said complainant's bill of complaint, for answer thereunto, or to so much thereof as

this respondent is advised to be material or necessary for him to answer, says, that previous to the actual purchase of the lots of land in the complainant's bill mentioned by the said Shane and this defendant of the said Abraham Buford, through J. S. Wills, this defendant never knew, nor was he informed, that the said James E. Smith and the said James Johnston, or either of them, were or ever had been in the possession of the said lots of land, or any part thereof, or that the said Smith and Johnston, or either of them, claimed or pretended to claim any right to the said land, or any part thereof; this defendant, however, admits, that before the purchase was made by said Shane and this defendant of the said Buford, he understood that the original patent for the said land, granted by the President of the United States to the said Buford, was in the possession of a Mr. Smith, of Philadelphia, but at the same time understood that the said Smith had no title to the said land; this defendant further says, that as to any transaction which might have taken place between the said Shane and the said Johnston, or between the said Shane and the said Smith, in Philadelphia, relative to any offer to purchase the said land of them, or either of them, by the said Shane, or of any pretended purchase of the said Wills at any time previous to the actual purchase of the said land of the said Buford by the said Shane and this defendant, this defendant knows nothing; this defendant also denies that he ever knew or was informed that the said Wills ever sold the said land warrant to the said Smith and Johnston, or to either of them, or that the said Wills had authority so to do; this defendant further says, that he had no knowledge or information before the execution of the deed made by the said Buford to the Shane and this defendant, that the said Smith and Johnston, or either of them, had any title or claim to the said lots of land, nor has he had any such information since, except that which is derived from what is set forth and alleged in the complainant's bill of complaint; this defendant also denies that he had any knowledge or information that any inducement was ever held out to the said Buford to execute the deed of the said lots of land to the said Shane and this defendant, and as to any certificate, writing, assurance, or memorandum, made by the said Wills and presented to the said Buford to induce him to execute the said deed, this defendant has no knowledge or information, except what he may have derived from the allegations contained in the said bill of complaint; the defendant admits that he did know that a certified copy of the original patent for the said land to the said Buford was obtained from the proper department, and that previous to the obtaining the same this defendant has been informed that the original patent was in the possession of a Mr. Smith, living in Philadelphia, as by the defendant is above stated; and this defendant further states, that he never did apply to the said Smith or Johnston for the said patent, nor does he know of any application made by the said Shane to either of them for the same; and this defendant denies that he was ever informed that the said Buford refused to execute a deed of the said lots of land to the said Shane and this defendant, unless the said Shane would produce a certificate that they were the true and lawful owners of said lots of land, derived through his, the said Buford's, agent, the said Gibson; this defendant also denies that he ever understood, or was informed, that the said Gibson had any authority from the said Buford to sell or transfer the said land warrant or the said lots of land.

And this defendant, further answering, says, that he understood and believes that the said Shane paid to the said Buford five hundred dollars for

the said land, or this defendant says that he furnished and paid to the said Shane two hundred and fifty dollars for that express purpose, and as the moiety of the real consideration paid to the said Buford for the said land, and for this defendant's portion of the said purchase, and that this defendant verily believes that the said sum of five hundred dollars was paid bona fide by said Shane to the said Buford; and this defendant also states that he was jointly interested with said Shane in making the purchase of said land from the said Buford, and in this particular purchase the said Shane acted in behalf of this defendant.

And this defendant solemnly denies any contrivance or confederation with others to injure, oppress, or defraud the said complainant, unless his joining with the said Shane in making an honest, lawful, and fair purchase of the said land of the said Buford be construed into such injury, oppression, and fraud, without that any other matter or thing in the complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well, truly, and sufficiently answered unto, confessed or avoided, traversed or denied, is true.

All which matters and things the defendant is ready to aver, maintain, and prove, as this honorable court shall award, and humbly prays that the said complainant's bill of complaint may be dismissed, and the reasonable cost and charges of this defendant in this behalf most wrongfully sustained, adjudged to him.

R. J. MEIGS.

The State of Ohio, Washington county, ss.

At Marietta, on the 9th day of August, 1823, before me, personally came Return J. Meigs, who made solemn oath that the matters and things stated in the foregoing instrument of writing, by him subscribed, are true, as he verily believes.

In witness whereof, I have hereunto set my hand and seal.

DAN'L H. BUELL, *J. P.* [L. S.]

The State of Ohio, Washington county, ss.

As clerk of the court of common pleas within and for the said county of Washington, I do hereby certify that Daniel H. Buell, Esquire, who has signed his name to the foregoing certificate, was, at the time of signing the same, a justice of the peace within and for the township of Marietta, in said county, duly elected commissioner, and qualified agreeably to law, and that full faith and credit are and ought to be given to all things by him thus done and certified, as well in courts of justice as elsewhere.

In testimony whereof, I do hereunto set my hand, and affix the seal of said court, at Marietta, this ninth day of August, Anno Domini one thousand eight hundred and twenty-three.

GEO DUNLEVY, *Clerk.* [L. S.]

And afterwards, to wit, at the December term of said court, A. D. 1826, this cause was further continued.

And afterwards, to wit, at the July term of said court, A. D. 1827, this cause was set for hearing, and thereupon the following exhibits and testimony were read as evidence, to wit:

This indenture, made the sixth day of October, Anno Domini one thousand eight hundred and twenty-six, between Abraham Buford, of the coun-

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ty of Scott, in the State of Kentucky, and Martha his wife, of the one part, and James E. Smith, of the city of Philadelphia, in the State of Pennsylvania, a gentleman, of the other part; whereas by patent, under the hand of Thomas Jefferson, then President, and seal of the United States of America, dated the sixth day of August, one thousand eight hundred and twenty-one, issued in pursuance of the act of Congress passed the first day of June, one thousand seven hundred and ninety-six, entitled "An act regulating the grants of land appropriated for military services, and for the society of the united brethren for propagating the gospel among the heathen," and of the several acts supplementary thereto, passed on the second day of March, one thousand seven hundred and ninety-nine, and on the eleventh day of February, and first day of March, one thousand eight hundred, there was granted unto the said Abraham Buford, a colonel in the then late army of the United States, in consideration of his military services, five certain tracts of land, estimated to contain each one hundred acres, being numbered seventeen, eighteen, nineteen, twenty, and twenty-one, in the third quarter of the eighth township in the first range of the tract appropriated for satisfying warrants for military services, surveyed and located in pursuance of the acts above recited, to hold to him, the said Abraham Buford, his heirs and assigns, for ever, subject to the conditions, restrictions, and provisions, contained in the said recited acts; and whereas the warrant, in virtue of which the said tracts of land were surveyed, was, previous to the issuing of the said patent, by sundry mesne transfers, vested in the said James E. Smith and a certain James Johnston, jointly, by whom the said lands were located, and the said James Johnston, on the thirteenth day of May, eighteen hundred and twenty-one, released his interest therein to the said James E. Smith, by virtue whereof the equitable title of said lands became vested solely in him, the said James E. Smith; and whereas, in pursuance of an act of Congress passed the first day of March, one thousand eight hundred, notwithstanding the sale of the said warrant by him, the said patent was issued in his name as the warrantee, whereupon the legal title thereof became vested in him, the said Abraham Buford: Now this indenture witnesseth, that in consideration of the premises, and of the sum of one dollar, to them in hand paid by the said James E. Smith at the time of the execution hereof, the receipt whereof is hereby acknowledged, they, the said Abraham Buford, and Martha his wife, have granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, release, and confirm, unto the said James E. Smith, his heirs and assigns, all the estate, right, title, interest, property, claim, and demand whatsoever, of him, the said Abraham Buford, and Martha his wife, as well at law as in equity, of, in, and to all those the aforesaid five tracts of land, estimated to contain each one hundred acres, and numbered as aforesaid, together with all and singular the ways, waters, watercourses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever, thereunto belonging or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof, to have and to hold all and singular the hereditaments and premises hereby granted and released, or mentioned and intended so to be, with the appurtenances, unto the said James E. Smith, his heirs and assigns, to and for his and their own proper use and behoof, for ever; but without any grantee or warrantee of title whatever by the said Abraham Buford or his heirs, in any event whatever.

In witness whereof, the said parties have interchangeably set their hands and seals hereunto, dated the day and year first above written.

A. BUFORD. [SEAL.]
MARTHA BUFORD. [SEAL.]

Sealed and delivered in the presence of

State of Kentucky, Scott county, ss.

I, Ben. B. Ford, clerk of the said county court, certify that the aforegoing deed was this day before me acknowledged by the above named Abraham Buford, and Martha his wife, as their act and deed, and the said Martha being by me examined, separately and apart from her husband, and the contents of the said deed being first made known to her, freely and voluntarily relinquishing her right of dower to the premises therein mentioned.

In testimony whereof, I have hereunto set my hand, and seal of the said county, this 6th day of October, A. D. one thousand eight hundred and twenty-six.

BEN. B. FORD, *C. S. C. C.* [L. S.]

The State of Ohio, Tuscarawas county, ss.

Recorder's Office. Received for record on the 22d day of November, 1826, and recorded in record book, vol. 4th, pages 403 and 404, on the 14th Dec. 1826.

JAMES PATRICK, *Recorder.*

Seventh circuit court of the United States, district of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS.

State of Pennsylvania, county of Philadelphia, ss.

Personally appeared before me, George Morton, Esquire, one of the associate justices of the court of common pleas of the said county of Philadelphia, at the county court-house, in the city of Philadelphia, in the State of Pennsylvania, on the seventeenth day of December, Anno Domini one thousand eight hundred and twenty-four, at twelve o'clock, noon, Joseph S. Randall, of the said city, who, being first cautioned, examined, and sworn, to testify the whole truth, &c., touching the above cause, deposeth and saith, that he has carefully examined the files of newspapers in the library of the Library Company of Philadelphia, in the said city, and in one of the said files, to wit, volume XVII of the Gazette of the United States and Philadelphia Daily Advertiser, and in the paper dated the first day of February, one thousand eight hundred, No. 2,296, there is an advertisement which he carefully copied and compared, in the words following, to wit:

" *To the holders of military land warrants, for the purpose of locating.*

" James E. Smith, as early as the second of September, shortly after his return from viewing the military land, offered his services to the holders of the military land warrants for the purpose of classing, registering, and lo-

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cating them, in consequence of an arrangement made with Mr. James Johnston in July preceding on the land, for the purpose of exploring the sections in the whole survey; this business having been carried into complete effect by Mr. Johnston, with the assistance of an intelligent inhabitant of that country, they having taken notes descriptive of the situation, soil, and natural advantages, attached to each section in the whole survey, Mr. Johnston being now here with those notes, together with the said J. F. Smith, having a complete copy of the Surveyor General's return, made to the Treasury Department, of the township surveys; being thus informed, the subscribers, jointly, offer their services to the holders of warrants of the above description, to receive, register, and locate, for which one-tenth part of the land located will be required as a compensation for locating, where the registry is already made, as may be hereafter agreed on by applying to either of the subscribers.

"Such of the honorable the members of Congress as may now hold or may receive warrants from their friends before the eleventh of February next, by addressing a line to either of the subscribers, through the medium of the postoffice, will be waited on agreeably to their appointment."

JAMES E. SMITH,
No. 100, south Eighth street, opposite the House-market.
JAMES JOHNSTON,
No. 329, Market street, 3 ld. w. t. 17th f.

February 1.

And which appears to have been continued daily 13 times.

And in one other of the said files of the Aurora, "published daily for the heirs of Benjamin Franklin Bache, at No. 112, Market street, between Third and Fourth streets, Philadelphia," and in the paper dated the fourth day of February, Anno Domini one thousand eight hundred, No. 2,766, there is an advertisement which he also carefully copied and compared, in the words following, to say:

To the holders of military land warrants, for the purpose of locating.

James E. Smith, as early as the second of September, after his return from viewing the military land, offered his services to the holders of military land warrants for the purpose of classing, registering, and locating them, in consequence of an arrangement made by Mr. James Johnston in July preceding on the land, for the purpose of exploring the sections in the whole survey; this business having been carried into complete effect by Mr. Johnston, with the assistance of an intelligent inhabitant of that country, they having taken notes descriptive of the situation, soil, and natural advantages, attached to each section in the whole survey, Mr. Johnston being now here with those notes, together with the said E. Smith, having a complete copy of the Surveyor General's return, made to the Treasury Department, of the township survey; being thus informed, the subscribers, jointly, offer their services to the holders of warrants of the above description, to receive, register, and locate, for which one-tenth part of the land located will be required as a compensation for locating, where the registry is already made as may be hereafter agreed on, by applying to either of the subscribers.

Such of the honorable the members of Congress as may now hold or may receive warrants from their friends, before the eleventh of February

next, by addressing a line to either of the subscribers, through the medium of the postoffice, will be waited on agreeably to their appointment.

JAMES E. SMITH,
No. 100, south Eighth street, opposite the House-market.
JAMES JOHNSTON,
No. 229, Market street, d. t. 17 F.

Feb. 4.

And which appears to have been continued daily twelve times.
And further this deponent saith not.

J. S. RANDALL.

State of Pennsylvania, Philadelphia county, sct.

I certify, that on this seventeenth day of December, Anno Domini one thousand eight hundred and twenty-four, at the county court-house, in the city of Philadelphia, in the State of Pennsylvania, at twelve o'clock noon, before me, George Morton, Esquire, one of the associate judges of the court of common pleas of the said county, the above named Joseph S. Randall personally appeared, and being carefully examined, cautioned, and sworn, to testify the whole truth, &c. touching a certain cause now depending and undecided in the seventh circuit court of the United States for the district of Ohio, wherein James E. Smith is plaintiff, and Abraham Shane and Return J. Meigs are defendants, deposed and testified to the matters and things stated and set forth in the above deposition, which was reduced to writing, and subscribed by the said deponent, Joseph S. Randall, in my presence. I do also certify that the above named Joseph S. Randall lives at a greater distance than one hundred miles from Columbus, Ohio, which is the reason of the above deposition being taken; that I am not of counsel nor attorney to either of the parties to the abovementioned cause, nor interested in the event of said suit, and that neither of the defendants to said suit, nor their attorney or attorneys, reside, live, nor are they, as I verily believe, within one hundred miles of the place of taking, viz. the caption of said deposition, and therefore no notice was given them of taking the same. The said deposition was taken at the request of Thomas Mitchell, in behalf of James E. Smith.

Witness my hand and seal, the day and year aforesaid.

GEO. MORTON. [SEAL.]

Philadelphia county, ss.

I, Mathew Randall, prothonotary of the court of common pleas for the city and county of Philadelphia, do hereby certify that the honorable George Morton, before whom the preceding acknowledgment was taken, and who has thereto subscribed his name, was at the time of so doing, and now is, one of the associate judges of the court of common pleas for the city and county of Philadelphia, duly commissioned and qualified, to all whose acts as such full faith is and ought to be given, *in all* courts of justice as elsewhere.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at Philadelphia, this 17th day of December, 1824.

MATHEW RANDALL. [L. S.]

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The seventh circuit court of the United States, and district of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS.

State of Ohio, Tuscarawas county.

Personally appeared before me, Nicholas Neighbour, one of the associate judges of said county, at the court-house of said county, in New Philadelphia, on the first day of December, in the year of our Lord 1824, at 2 o'clock P. M., the witness, Abraham Kniseley, Esquire, one of the justices of the peace of said county, who being first cautioned, examined, and sworn, to testify the whole truth, &c. touching the above cause, deposeth and saith, that, some time after the return of Abraham Shane from Philadelphia, Pennsylvania, Virginia, and Kentucky, in the year 1815, in conversation with him, he stated to me that he had been to the city of Philadelphia, to see a Mr. Smith respecting some lands which he knew Smith owned, or was concerned in the State of Ohio, and which he wished to purchase; that he found James E. Smith at his office, and inquired of him if he owned lands in the State of Ohio; Smith replied he did, in connexion with James Johnston; Shane then proposed to Smith to purchase a tract or tracts; if he could see the papers describing the surveys, he would then point out the lands he wished to purchase; Smith informed him he would the next morning bring them with him from his dwelling-house, and if he would call the next day he should see them; that he called the next day at Smith's office, and Smith handed him a bag containing patents and deeds that would nearly have filled a peck or half bushel; that he, Shane, had the full examination of them; that he there found among those papers the patent for 500 acres of land granted to Col. Abraham Buford, the paper he had long been wishing to see, but found no deed from Buford to Smith; that he proposed to Smith to purchase Buford's land; that Smith refused to sell, but referred him to Johnston, who resided in the State of Ohio, and who, Smith said, was equally concerned with him in those lands, and that he, Shane, observed the date of the patent to Buford, in order to assist him in his further investigation; that he then left Smith, and went on to Washington city, and from thence to Virginia, in search of Mr. Wills, who, he was informed, owned, or had once owned, the warrant granted to Col. Buford, in order to purchase the lands of him; that he at length found Wills, at which Wills was so much in liquor as to be incapable of transacting business; that when sober he applied to him to purchase Buford's land, which Wills at first objected to do, but that he, Shane, afterwards prevailed upon him so to do, and that he paid, or was to pay, Wills for the land, and that Wills gave him a certificate, directed him to Col. Buford, stating that Shane had bought his land, and requested that Shane should have a deed from him; that he went on to Kentucky to Col. Buford, with the certificate of Wills, and when he came to Col. Buford he observed to him that he had written to him respecting some lands he had in the State of Ohio, but now he had the pleasure to see him personally; that he, Shane, had bought some lands from Wills, and that he was rather doubtful of Wills's title; he would rather have his, and obtained from Col. Buford the lawful title, but that he had not the equitable one.

Interrogatory by the plaintiff.

Question 1. At what distance did you and A. Shane live apart?

Answer. Not more than five miles.

Q. 2. Did you and Shane frequently converse together?

A. Yes.

Q. 3. Have you any knowledge of your father's leasing said lands, and by whose authority your father leased it?

A. By James Johnston.

Q. 4. Who did your father lease said land to?

A. Henry Knoble.

Q. 5. How long did Knoble occupy said land?

A. Do not recollect.

Q. 6. What improvements was made on said lands whilst in Knoble's possession under said lease?

A. He built a cabin-house and a cabin-barn, and cleared all the land that lies on the northeast side of the road.

Q 7. What improvements had been made since Shane held the property?

A. There has been some clearing done on the other side of the road, but not finally cleared of what is cleared.

Q. 8. Is there any sugar camp on said land, and is there any camp-house on said land?

A. I do not know that there is a camp-house, but there is a sugar camp, or sugar trees.

Q. 9. Has not there been considerable wood cut on said lands where it was not cleared?

A. I did see Prudent cut outside the enclosure, and take some to New Philadelphia for sale.

Q. 10. Was Prudent a tenant to Shane?

A. He was.

Q. 11. Who was the reputed owner of the lands now in dispute before Mr. Shane got it in possession?

A. Smith and Johnston.

Q. 12. Did Shane at any time dispose or sell any of said land?

A. Yes, but not certain whether one or two hundred acres.

Q. 13. Who bought from Shane, and the result of the same?

A. Shane sold to Christian Casebeer. Some time after Casebeer became alarmed, being doubtful of the title, and gave up the bargain.

Q. 14. Whether the deposition is not precisely the same as you related to me in 1820?

A. As near as I recollect.

Q. 15. What was the purport of the several conversations you had with Shane, relative to the lands in question?

A. In one of said conversations Shane told me, that he sold part of the land in question to Christian Casebeer, but had only sold his part but not his partner's, and meant to pinch Casebeer a little there; the other conversation was, that he meant to improve said land, build a house, and clear land.

Q. 16. Has any improvements been made on said lands since Shane had possession thereof?

A. There is no improvements, except clearing some land in part.

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Q. 17. What was Mr. Casebeer to pay to Shane for the land Shane sold to him per acre?

A. Shane told me that Casebeer was to pay him ten dollars per acre; I also heard Casebeer say that he was to pay Shane ten dollars per acre, some cash to be paid, and as to the payment I cannot say.

Question put by the defendants' counsel, Mr. Atherton.

Q. 1. When and where did you hold the conversation with Mr. Shane?

A. In the latter part of the fall, in the year 1815, near my house.

Q. 2. Was this conversation introduced by Mr. Shane or yourself, and in what manner was it introduced?

A. I asked him about this land, and asked him whether he had purchased said land, and he said yes, and then told the circumstances.

Q. 3. Did you not at that time tell Shane that you believed that Johnston or Smith had no title to the above said lands, or any other lands they pretended to own?

A. No.

Q. 4. Did not Shane at that conversation tell you that he had the legal title, but was uncertain about the equitable title?

A. Shane told me that he had the lawful title but not the equitable one.

Q. 5. Did not your father, at some time previous to the making the lease you have mentioned to Knoble, make a lease of land adjoining the lands in question to the same Knoble; if so, by whose authority did he make that lease? Was not Knoble put out of possession? if so, by whom and in what manner, and for what reasons? and who now owns the land so leased to Knoble previous to your father's leasing a part of the lands in question?

A. My father received verbal orders from James Johnston to lease land, and, in pursuance to that order, leased a tract of land to Knoble for a term of years, adjoining the lands in question. Henry Laffer purchased the land so leased to Knoble, and dispossessed Knoble before the expiration of Knoble's lease. Knoble then threatened my father to come upon him for damages, and my father and Knoble compromised; and that a short time after my father received a power of attorney from James Johnston to lease the land in question, and he accordingly leased to Knoble. Christian Casebeer now owns the land first leased by my father, adjoining the lands now in question, as I believe.

Q. 6. Do you not know that James Johnston and James E. Smith, or one of them, sold other lands in Tuscarawas county to different persons, of which they failed or was unable to give a title; if so, by whom was such land sold, and to whom?

A. About seventeen years ago, I happened in conversation with James Johnston; he told me, at my house, that he had sold a certain tract of land to Henry Sills about fifteen years since; I met with Henry Sills at Urich's mill, in this county, where I asked him whether he got a title from Johnston for the lands he purchased of him, he said not, and I believe that said Sills resided on said lands until his death; I do not remember when he died.

Q. 7. Has not Johnston heretofore, and has he not now, the reputation of a dishonest man, particularly in his land transaction, and have you not heard Mr. Smith himself say that Johnston was a dishonest man?

A. I did not ever hear any person say that Johnston was a dishonest man, neither did I hear Mr. Smith say that said Johnston was a dishonest man.

Q. 8. Have you not heard Smith say that he had no title for the land in question?

A. I have always understood Smith that he had a title for said lands.

Q. 9. Did Mr. Shane tell you, at the time of the conversation mentioned, that he found in Smith's office, in Philadelphia, any deed or deeds, conveying to Smith and Johnston, or either of them, any lands in the State of Ohio?

A. He did not find the deed from Buford to Smith, as to other lands in Ohio he said nothing in particular, as I recollect.

Q. 10. Were not Smith and Johnston, or one of them, once the reputed owners of the land adjoining the lands in question, which are now owned by Casebeer and Gabriel Crider? and since Henry Laffer purchased the last mentioned lands, have Smith and Johnston, or either of them, ever pretended to set up a title to them?

A. I do not recollect that they ever did, either before or after Laffer purchased said land.

Q. 11. Did not Smith and Johnston, or either of them, claim other tracts in Tuscarawas county, to which they have no title? if so, state what and where those lands are, and your means of knowledge.

A. I do not know that they claim any to which they have no title; I do not know any thing about their titles.

Q. 12. Have you ever heard Smith say that he and Johnston were in partnership in lands in the State of Ohio, and have you not heard him deny that they were in partnership?

A. I did hear Smith and Johnston both say that they were in partnership in locating lands in Ohio, and that I never heard either of them deny it.

Q. 13. How long were you and Shane in conversation on the subject of the Buford lands, as near as you can recollect, and did you make any memorandum of the conversation at that time? if not, when was a memorandum of it made, and by whom?

A. Mr. Shane came along the road near my house, and I was in a clearing near the road, and we both sat down on a log, and conversed about an hour upon the subject; I made no memorandum at that time. In 1820 I first saw Mr. Smith, and stated the conversation to him; Smith requested me to bear in mind said conversation. In 1822 Mr. Smith came to this place, and then, from my statement, it was reduced to writing by Mr. Smith as I stated it; Mr. Smith showed the same memorandum in 1823.

Q. 14. Is the foregoing deposition in your handwriting, and is your deposition copied from said memorandum?

A. Yes.

Sworn to and subscribed before me, the 4th day of December, 1824.

ABRAHAM KNISLEY.

State of Ohio, county of Tuscarawas, ss.

I certify, that at the court-house, in New Philadelphia, in said county, Abraham Kniseley, having personally appeared, and being carefully examined, cautioned, and sworn, to testify the whole truth touching a certain cause now depending and undecided in the 7th circuit court of the United States for the district of Ohio, wherein James E. Smith is plaintiff, and Abraham Shane and Return J. Meigs are defendants, deposed and testified to the matters and things stated and set forth in the above deposition, which

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was reduced to writing by the deponent, and copied by me, and subscribed by the said deponent, Abraham Kniseley. I also certify, that a notice was made out, and personally served on Abraham Shane, on the 29th day of November, 1824; the parties met Smith in person, and Shane by his counsel, Watherton, agreeably to notice, and by adjournments from day to day till the 4th December, 1824, which notice is hereunto annexed; and that I am not of counsel or attorney to either of the parties to the abovementioned cause, nor interested in the event of said suit; said deposition was taken at the request of James E. Smith.

NICHOLAS NEIGBOUR,
One of the associate judges for said county.

7th circuit court of the United States, district of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS.

Take notice that the plaintiff in this cause will proceed to take the deposition of Abraham Knisely and George W. Canfield *de benesse*, before me, at the court-house, in New Philadelphia, on the first day of December next, at 2 o'clock P. M., to be read in evidence in the above cause; please to be present, and put interrogatories if you think fit. Nov. 29th, 1824.

NICHOLAS NEIGHBOUR,
One of the associate judges.

General ABRAHAM SHANE.

The State of Ohio, Tuscarawas county, ss.

Personally before me, Alexander McConnell, one of the justices of the peace in and for the county aforesaid, came Thomas Willard, on the 29th day of November, 1824, who, being duly sworn according to law, deposeth and saith, that he served the aforegoing notice on Abraham Shane in the town of New Philadelphia, on the said 29th day of November, at the hour about half after two o'clock, of which the above is a true copy; and further this deponent saith not. THOMAS WILLARD.

Sworn and subscribed to before me, this 29th day of Nov., A. D. 1824.
ALEXANDER McCONNELL, *J. P.*

The deposition of Abraham Knisely is excepted to by defendant, on the ground that it was read by witness from a written memorandum made for witness by Smith, the plaintiff. T. EWING, *for def't.*
July 13th, 1829.

The above objection was taken on the hearing of this cause at the July term, 1828.
T. EWING.
W. SILLIMAN.

That some time after the return of Abraham Shane from Philadelphia, Pennsylvania, Virginia, and Kentucky, in the year 1815, in conversation with him he stated to me that he had been to the city of Philadelphia, to see a Mr. Smith respecting some lands which he knew Smith owned or was concerned in in the State of Ohio, and which he wished to purchase; that he found James E. Smith at his office, and inquired of him if he owned lands in the State of Ohio; Smith replied he did, in connexion with James

Johnston; Shane then proposed to Smith to purchase a tract or tracts; if he could see the papers describing the surveys, he would then point out the land he wished to purchase; Smith informed him that he would the next morning bring them with him from his dwelling-house, and if he would call the next day he should see them; that he called the next day at Smith's office, and Smith handed him a bag containing patents and deeds that would nearly have filled a peck or half bushel; that he, Shane, had the full examination of them; that he there found among those papers the patent for 500 acres of land granted to Col. Abraham Buford, the paper he had long been wishing to see, but found no deed from Buford to Smith; that he proposed to Smith to purchase Buford's land, that Smith refused to sell, but referred him to Johnston, who resided in the State of Ohio, and who, Smith said, was equally concerned with him in those lands; and that he, Shane, observed the date of the patent to Buford, in order to assist him in his farther investigation; that he then left Smith, and went on to Washington city, and from thence to Virginia, in search of Mr. Wills, who, he was informed, owned, or once had owned, the warrant granted to Col. Buford, in order to purchase the land of him; that he at length found Wills, at which time Wills was so much in liquor as to be incapable of transacting business; that when sober he applied to him to purchase Buford's land, which Wills at first objected to do, but that he, Shane, afterwards prevailed upon him so to do, and that he paid, or was to pay, Wills for the land, and that Wills gave him a certificate directed to Col. Buford, stating that Shane had bought his land, and requested that Shane should have a deed from him; that he went on to Kentucky to Col. Buford with the certificate of Wills, and when he came to Col. Buford he observed to him that he had written to him respecting some lands he had in the State of Ohio, but now he had the pleasure to see him personally; that he, Shane, had bought some lands from Wills, and that he was rather doubtful of Wills's title, he would rather have his, and obtained from Col. Buford the lawful title, but that he had not the equitable one.

ABRAHAM KNISELY.

The foregoing is the original deposition in Abraham Knisely's handwriting, alluded to in the 14th question put by the defendants' counsel.

TREASURY DEPARTMENT, C. W. *Oct.* 28, 1801.

Mr. JAMES E. SMITH:

DEAR SIR: Yours from 22d instant I received the 27th. I certainly did not know what to think, receiving no answer of several of my letters; now informed of the reason. I am glad to hear you and your family getting well, and which, I hope, will be complete by this time. I will thank you if you will soon send all the warrants for the lots you mentioned once. It is difficult for me to keep them longer for you. I had already many trouble about it. Also please and send another warrant on the place for Rebecca McDonald, or the certificate for her. I have finished and packed up for you now 22 patents, with the draught, (except for R. McDonald none,) a general draught of the lands, including the refugees', &c. lands in the Raowing ranges; the draughts and explanation of the 10 donation lands; the plan, &c. of the city of Washington, and another printed law concerning the above mentioned lands; and if you please and send all the rest for locations you will make, or other thing in my line. You wish more to have; then will advise to leave the whole together with me. Give the proper directions,

&c., I will have them all sent you by post, (favored free by the Register's signature,) only appoint here a gentleman who gives me a receipt, for I or he has delivered every thing specified to the postoffice. Here is a list of the locations made in your office since my last letter. In range 9 township 1 section 3, (said an excellent one,) lots No. 29, 30, 31, 32, 33, 34, and 35, and the whole section No. 3, in township 2 and range 3, by Zacheus Biggs and Zacheus A. Beatty, for 4,000 acres; send enclosed the warrants to me.

N. B. A particular circumstance has arisen here (since 2 days) in the Bank of Columbia, which much alarms (about cash, only notes); it will be of great consequence if the notes taken all up, and the bank shall pay the cash, for Mr. Henderson, late cashier, has made some secret information. Most people will not take here any such notes more.

Yours, &c. CHAS. DE KRAFFT.

A list of all the papers, writings, different plans, maps, patents, laws, &c., and the locations on which Mr. Charles De Krafft has been employed to make out for James E. Smith, are as follows, viz:

A copy of a law made in the last session of Congress, for the regulations of the grants of lands appropriated for refugees from the British provinces of Canada and Nova Scotia. Several copies of sections and informations sent heretofore at several times, (every one of them can be mentioned, particular at which time they have been sent if desired.) By directions received of Mr. James E. Smith, the following papers have been delivered to Mr. James Johnston, of Philadelphia, viz. 22 patents, and the draughts of land annexed on each, with filed notes.

No.			
1.	For Archibald Stark, lieutenant	- -	200 acres
2.	George M. Cully, captain	- - -	300 acres
3.	Nicholas Van Renselear, captain	- -	300 acres
4.	Jacob Reed, captain	- - -	300 acres
5.	Peter Perez, serjeant	- - -	400 acres
6.	Wm. Knox, lieutenant	- - -	200 acres
7.	Charles Selden, lieutenant	- - -	200 acres
8.	Jno. A. Hamilton, captain	- - -	300 acres
9.	Abrm. Buford, colonel	- - -	500 acres
10.	Jno. McDowell, serjeant	- - -	400 acres
11.	Jno. McCay, lieutenant	- - -	200 acres
12.	Anthony Maxwell, lieutenant	- -	200 acres
13.	Jno. Leahia, soldier	- - -	100 acres
14.	Benoni Hegins, soldier	- - -	100 acres
15.	Thos. Means, soldier	- - -	100 acres
16.	Jno. Moore, sergeant	- - -	100 acres
17.	Wm. Beaty, soldier	- - -	100 acres
18.	Godfrey Shreave, soldier	- - -	100 acres
19.	Jno. Weaver, soldier	- - -	100 acres
20.*	Jno. Starks, brigadier general and the annexed certificate for 50 acres, signed by Jos. Nourse, Esq., Register of the Treas'y.	- -	800 acres
21.*	Jacob Leonard, ensign and a certificate annexed for 50 acres.	- - -	100 acres
22.*	Jno. McEuen, ensign and a certificate annexed for 50 acres.	- - -	100 acres

* These 3 certificates of 50 acres each, delivered up to Mr. Johnson for filling up another 4,000 acre section.

N. B. A patent for 300 acres in the name of Capt. Charles Turnbull.

A patent for 4,000 acres in the name of Mr. James Johnston, range 1 township 2 section 1.

A patent for 4,000 acres in the name of Mr. James Johnston and Noah Zane, range 7 township 1 section 4.

These 2 patents I will send post free to Philadelphia as soon as they will be issued.

A large general draught of the whole district of Chillicothe, and the ranges No. 16, 17, 18, 19, 20, 21, 22, and 23, which includes the refugees' lands, &c. &c., of which more fully and explanation is fixed to the same draught.

A draught of part of Steubenville district: the tracts shaded in red are sold at Pittsburg; those shaded in yellow sold at New York.

A printed map of the city of Washington: the colored lots denote what is sold or shall be resold.

Plans of the ten donation, district of Pennsylvania, and the explanation of them annexed.

A printed act of the lands of the United States, &c.

Seven draughts of the ranges and townships in Chillicothe district divided, and now returned from the Surveyor General of the western territory to the Secretary of the Treasury.

Delivered to Mr. James Johnston the above mentioned papers, 11th January, 1802, and received the sum sixty dollars of all demands.

CHARLES DE KRAFFT.

Seventh circuit court of the United States, district of Ohio.

JAMES E. SMITH, *vs.* ABRAHAM SHANE and RETURN J. MEIGS. } *District of Columbia, city of Washington.*

Personally appeared before me, Roger C. Weightman, mayor of the city of Washington, in the District of Columbia, on the nineteenth day of November, in the year of our Lord one thousand eight hundred and twenty-four, F. Cornelius De Krafft, son of the late Charles De Krafft, deceased, who being first cautioned, examined, and sworn, to testify the whole truth, &c. touching the above cause, deposeth and saith, that the annexed paper, (headed "a list of all the papers, writings, different plans, maps, patents, laws, &c., and the locations on which Mr. Charles De Krafft has been employed to make out for Mr. James E. Smith, are as follows,") is the body of it in my handwriting, and the receipt at the foot is in the handwriting of my father, Charles De Krafft, deceased; said receipt, dated 11th January, 1802; and the said deponent further deposeth and saith, that the annexed letters, dated Treasury Department, C. W., October 28, 1801, addressed to Mr. James E. Smith, 130 south Eighth street, Philadelphia, and post marked October 28, signed Charles De Krafft, *is* in the handwriting of my father, Charles De Krafft, deceased. And further this deponent saith not.

F. C. DE KRAFFT.

District of Columbia, Washington county, ss.

I, Roger C. Weightman, mayor of Washington, certify that on the nineteenth day of November, eighteen hundred and twenty-four, F. Cornelius De Krafft personally appeared at ten o'clock A. M., at the mayor's

office, in the city of Washington, and having been carefully examined, cautioned, and sworn, to testify the whole truth touching a certain cause now depending and undecided in the 7th circuit court of the United States for the district of Ohio, wherein James E. Smith is plaintiff, Abraham Shane and Return J. Meigs are defendants, deposed and testified to the matters and things related and set forth in the above deposition, which was reduced to writing by the said defendant in my presence, and by him subscribed; I also certify that the abovenamed defendant, F. Cornelius De Krafft, lives at a greater distance than one hundred miles from Columbus, Ohio, which is the reason of the above deposition being taken; that I am not of counsel nor attorney to either of the parties to the abovementioned cause, nor interested in the event of the said suit, and that neither of the defendants to said suit, nor their attorney or attorneys, reside, live, nor are they (as I verily believe) within one hundred miles of the city of Washington, and therefore no notice was given them of the taking of the same. Said deposition was taken at the request of James E. Smith.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the corporation of the city of Washington to affixed, this nineteenth day of November, 1824.

R. C. WEIGHTMAN, *Mayor.* [L. S.]

Attest: WM. HEWITT, *Register.*

City of Pittsburg, Commonwealth of Pennsylvania.

Personally appeared before me, John Darragh, mayor of the city of Pittsburg, in the commonwealth aforesaid, at my office, in said city, on the fourth day of December, in the year of our Lord one thousand eight hundred and twenty-four, at 10 o'clock A. M., James Johnston, who being first cautioned, and examined, and sworn, to testify the whole truth and nothing but the truth touching a certain cause pending in the seventh circuit court of the United States, district of Ohio, in which one James E. Smith is plaintiff, and Abraham Shane and Return J. Meigs are defendants, deposeth and saith, that he has no interest in said cause, either directly or indirectly, and that the result of said cause is to him indifferent; and he further saith, that the deponent and James E. Smith entered, in the year 1799, into a partnership for the purchase of military land warrants of the United States, to have them located to our joint interest. About the beginning of the year 1800, the deponent purchased of John S. Wills a warrant belonging to Col. Buford, of the Virginia line, for five hundred acres of land, and paid said Wills thirty-three dollars per hundred acres for said warrant, and that said deponent has paid the taxes on said land from that time until 1816 or 1817. In the year 1813 Abraham Shane, one of the defendants, came to the deponent in Chillicothe, and wished to purchase the abovementioned land; deponent informed him that it was a partnership tract, and that he could not convey it; a very short time afterwards, perhaps a few days, John S. Wills came to the deponent, and also wished to purchase the same land, and offered me either twelve or fifteen hundred dollars for it, and informed me that he wished to purchase for Abraham Shane; the deponent evaded making a sale, and assigned the same reason that he had given to Abraham Shane. In the year 1820, perhaps in June or July of that year, a dissolution of partnership took place between the deponent and James E. Smith, the lands were divided, and the abovementioned five hundred acres of land fell to James E. Smith; at the same time reciprocal releases were executed,

all the writings were executed by Mr. Green, an attorney at law, now or lately living at Cincinnati, but then resident at Columbus. The deponent has now no interest in or claim to said property.

In answer to the first interrogatory, in addition to what is before stated, as to the time of the formation and dissolution of the partnership, the deponent states the partnership was not limited to any particular period when formed; that they were to buy warrants, locate them, and to divide equally either the lands or the money raised by the sale of lands. There was no fixed capital, each party bought all the warrants they could get, and we occasionally settled with each other.

In answer to second interrogatory, deponent saith, he bought said warrant from John S. Wills, in Philadelphia, in the year 1800, and I believe I gave him a check on the Bank of the United States for the amount, at thirty-three dollars per hundred acres, being one hundred and sixty-five dollars.

In answer to the third interrogatory, he had no other conversation with said Wills than that at Chillicothe, in the year 1813, as is before fully stated.

To the fourth interrogatory. None but the warrant itself, which is now, I presume, in the War Office at Washington city.

To the fifth interrogatory. Deponent believes said Wills was perfectly sober.

To the sixth interrogatory. Deponent states that he has nothing to add to what he has before stated to have taken place at Chillicothe in 1813.

To the seventh interrogatory. Deponent has for many years been engaged in buying and selling lands. In 1800 the Secretary of the Treasury directed the fraction adjoining the Moravian towns, a fifty quarter township, to be appropriated for the benefit of the original holders of warrants, and the deponent purchased a number of the officers' warrants, believing that every honorable man who had disposed of his warrant would convey when the patent issued: none of the officers whose warrants I had purchased refused to convey, and in no instance have I pretended to claim land to which I had no title but as above stated.

To the eighth interrogatory. Suit was brought in the name of deponent alone against Shane, perhaps in 1818 or 1819, but it was a mistake of the attorney, for I informed him that Smith was interested with me in the land.

To the ninth interrogatory. Since the dissolution of our partnership, deponent had no interest in the warrant or land.

To the tenth interrogatory. Deponent did pay the tax for many years; particulars he cannot now recollect, but the auditor's books will show.

To the eleventh interrogatory. Deponent believes that he pointed out the land to Mr. Smith, who went on to Washington, and located it.

To the twelfth interrogatory. The warrant was in the name of Col. Buford, but deponent has no knowledge or recollection of the endorsements.

To the thirteenth interrogatory. Deponent never held any thing but the warrant.

JAMES JOHNSTON.

Commonwealth of Pennsylvania, city of Pittsburg, ss.

I do certify that James Johnston, having personally appeared before me, at my office, in the city aforesaid, on the fourth day of December, in the year of our Lord one thousand eight hundred and twenty-four, at 10 o'clock A. M., and being carefully examined, and cautioned, and sworn, to testify the whole truth and nothing but the truth touching a cer-

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tain cause now depending and undecided in the seventh circuit court of the United States for the district of Ohio, wherein James E. Smith is plaintiff, and Abraham Shane and Return J. Meigs are defendants, deposed and testified to the matters and things stated and set forth in the above deposition, (which was reduced to writing by Neville Blraig, a disinterested person,) and subscribed by James Johnston, the deponent. I also certify that I am not of counsel nor attorney for either party to the above suit, nor am I interested in any way in the event of said suit. I do also certify that notice of the taking of said deposition was made out, and appears to me to have been duly served on John M. Goodenow, by giving him the original notice at his dwelling-house, in Steubenville, Ohio, on the 27th day of November, 1824, and on Abraham Shane, in New Philadelphia, on the 29th day of November, 1824, of which notices true copies accompanying this deposition. Said deposition was taken at the request of James E. Smith.

JOHN DARRAGH,
Mayor of the city of Pittsburg, in the Commonwealth of Pennsylvania.

The Commonwealth of Pennsylvania, city of Pittsburg, sct.

I, Silas Engles, clerk of the mayor's court in and for said city, do hereby certify that John Darragh, Esquire, before whom the foregoing deposition was taken, and whose certificate is annexed, and who has thereto, in his own proper handwriting, subscribed his name, was at the time of taking such deposition, and now is, mayor of the city of Pittsburg, to all whose acts as such due faith and credit is, and of right, ought to be given throughout the United States of America and elsewhere.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Pittsburg, this sixth day of December, in the year of our Lord one thousand eight hundred and twenty-four, and of the sovereignty and independence of the United States the forty-ninth.

Attest: S. ENGLES, *Clerk M. C.* [L. S.]

Seventh circuit of the United States, State and district of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS.

State of Kentucky, Fayette county and circuit, sct.

Personally appeared before me, Jesse Bledsoe, one of the judges of the circuit, being superior courts, aforesaid State, and sole judge of the circuit court held for said county, at the town of Lexington, in the same county, on the 25th day of December, A. D. 1824, at the tavern or hotel of Mrs. Keen, at 10 o'clock *P.* M., Abraham Buford, of lawful age, who, being first cautioned, and sworn, and examined, to testify the whole truth touching the above case, deposeth and saith, that upwards of twenty years ago he put a U. S. military warrant, land granted for his own services, for five hundred acres, into the hands of Col. Thomas Gibson, either to sell or to have it located for this deponent; some time after which he was informed by Col. Gibson that he had sold said land warrant; after which this deponent received a letter from John S. Wills, mentioning the sale of said land warrant, and perhaps mentioning his purchase of it, and requested that this deponent would forward to Col. Gibson a power of attorney to transfer

the said land warrant, or the plats and certificates of surveys made thereon, to him, said Wills, or to his assigns. This deponent, as requested, did forward such power to Col. Gibson, and heard nothing further on the subject for several years. About the year 1812 and 1814 this deponent received letters from a Mr. Abraham Shane, State of Ohio, requiring information respecting the lands which had been located and surveyed on said warrant, mentioning that the grant or grants had issued in this deponent's name. This deponent does not recollect to have heard any thing further on the subject, until said Shane came to this deponent's house, perhaps twelve months after the receipt of his last letter, which was dated in 1814, when he produced the No. of said warrant, with notes of surveys, in order, as he had said, to get a deed for said lands from this deponent, he having been impressed with a belief from Mr. Shane's abovementioned letters, and from the information of Col. Gibson, that he had sold said warrant to Wills, that said Shane was entitled to the title to said land through Wills, whose writing he brought, authorizing and requesting this deponent to make said title to said Shane. This deponent, without hesitation, concluded to make a special deed of said land to said Shane, and requested him to write a deed, but he, Shane, appeared at a loss to know what would be a proper deed, and with this deponent's advice he went to Georgetown, and employed Cary L. Clark, a clerk of the courts there, to write a deed for him; Shane returned with Ben. Chambers, a deputy clerk, who took this deponent and wife's acknowledgment to a deed for said land to him and Return Jonathan Meigs, which deed was dated about the 15th May, 1815. This deponent knew nothing of said Meigs having any concern with the said land until his name was found in the said deed, which Shane had caused to be there placed.

1. Question by complainant, Smith. What was the nature of the information you received from said Wills by said Shane, and what the purport of the writing he brought?

Answer. He wrote to me that Shane was entitled to said land, and authorized and requested this deponent to make him a title thereto, and which I was induced to do from my previous knowledge that Wills had become the purchaser of said warrant from the information of Col. Gibson himself to that effect.

2. Question by same. Were you paid for said warrant previous to making said deed?

Answer. Yes: I received the money for the same by an order from said Wills before I received said Shane's last letter above mentioned.

3. Question by same. Did Shane offer you any money to make the title of said land to him?

Answer. I do not recollect that he offered me any money, but I recollect telling him that I had received payment for said warrant by an order from said Wills.

4. Question by same. Did you at the same time inform Shane that you had no claim to said land, nor to any money therefor on account of the sale of said warrant?

Answer. I did.

5. Question by same. In making said deed did you conceive you were making the title to the assignee of the purchaser of the warrant?

Answer. I did.

6. Question by same. What, as near as you can recollect, was the amount of money received for the sale of the warrant in question?

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Answer. I do not recollect precisely, but suppose it must have been two or three hundred dollars.

7. Question by same. If Johnston and Smith had shown themselves assignees of the purchase of said warrant, would you have conveyed said title to them as you did to said Shane?

Answer. I certainly should, feeling no right in equity in myself to the land; and further said deponent saith not.

A. BUFORD.

State of Kentucky, Fayette county and circuit, sct.

I certify, that at Lexington, in the county and circuit aforesaid, at the tavern or hotel of Mrs. Keen, in said town, on the 25th day of December, A. D. 1824, at 1 o'clock P. M., of said day, personally, Abraham Buford appeared before me, and having been carefully examined, cautioned, and sworn, to testify the whole truth and nothing but the truth touching a certain cause now depending and undecided in the seventh circuit of the United States for the district of Ohio, wherein James E. Smith is plaintiff, and Abraham Shane and Return J. Meigs are defendants, deposed and testified to the matters and things stated and set forth in the above and foregoing deposition, which was reduced to writing by me, and subscribed by the said deponent, Abraham Buford. I also certify that the abovenamed Abraham Buford lives at a greater distance than one hundred miles from Columbus, Ohio, which I suppose to be the reason why the above deposition is taken. I further certify, that I am not of counsel or attorney for either of the parties to the abovementioned cause, nor interested in the event of said suit, and so far as I know or believe, neither of the defendants to said suit; nor their attorney or attorneys, reside, live, nor are they, as I verily believe, within one hundred miles of the said place of taking said deposition, to wit, that mentioned in the caption thereof; and therefore (I suppose) no notice is given of the time and place of taking the same, none being produced to me.

Given under my hand and seal, this 25th December, 1824, at Lexington aforesaid.

J. BLEDSOE, [SEAL.]
One of the circuit judges in and for the State of Kentucky, and presiding judge of the circuit court for the county and circuit of Fayette.

State of Kentucky, Fayette county, sct.

I, Thomas Bodley, clerk of the court for the circuit aforesaid, do certify that the honorable Jesse Bledsoe, who hath subscribed the above certificate, now is, and was, at the date thereof, one of the circuit judges for the State of Kentucky, and presiding judge of the Fayette circuit court, duly commissioned and sworn, and his official acts are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Lexington, this twenty-first day of December, in the year of our Lord one thousand eight hundred and twenty-four.

THOS. BODLEY, *Clerk.*

Seventh circuit court of the United States, district of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS.

State of Ohio, Brown county, ss.

Personally appeared before me, James Finley, one of the associate judges in and for the county aforesaid, at the dwelling-house of Hugh Lemon, in the town of Ripley, in the county and State aforesaid, on the 18th day of December, in the year of our Lord 1822, at 8 o'clock on said day, John S. Wills, who being first cautioned, examined, and sworn, to testify the whole truth, &c. touching the above cause, deposeth and saith, that many years past, Col. Thomas Gibson, then of Cincinnati, Ohio, put in his hands, either with or without transfer, not now recollected, a United States' land warrant that called for five hundred acres, if he is not mistaken, granted to Abraham Buford. Soon after he started to Philadelphia, on his journey, and before he started, he procured other warrants of the same kind, whilst in Philadelphia; he believes he sold some of them, and perhaps all, though he is not certain. Some years after this, a Mr. Abraham Shane applied to purchase of him the land entered and surveyed under the warrant in the name of Abraham Buford; his answer to him is not recollected, but from repeated application to him by Mr. Shane made at different times, and he believes in different years, to purchase this land; and Shane learning that he had seen Col. Buford, and that the Colonel would not sell, in consequence of his (the witness) claim, the witness came to conclusion, (however, before he came to this conclusion, Shane showed him a deed for a conveyance for this land from Colonel Buford,) and made it to Shane, that if he (Shane) would give him (witness) a sum of money, he would give him (Shane) a bond, conditioned that he would not, neither should his heirs, executors, or administrators, contest his (Shane's) claim. Shane and the witness closed the bargain. Witness gave the bond to Shane, and Shane made an agreement to pay witness the money. In no way had the witness ever authorized Colonel Buford to convey this land to Shane, or to any other; if any authority was shown, it was forged; and in no way had the witness ever conveyed it himself, unless the bond here spoken of, given by witness to Shane, should be so construed; which, if so, was not the intention of the parties. Witness was informed that Shane had said that witness gave him authority at Petersburg, Virginia, to receive a deed for this land from Colonel Buford. Witness well recollects that Shane arrived late one night at the tavern; witness was in, at Petersburgh, Virginia, and came to his bed and awoke him, and told witness his object was then to purchase this land, or witness's claim to it. Witness replied that he would not sell it, if he had any; and well recollects that he never rose out of his bed, and wrote nothing of any kind, until he was called to rise and enter the stage going to Norfolk. The arrangement between Shane and the witness place, as well as he recollects, at New Philadelphia, at a tavern kept by Stoul, or possibly at Zanesville. I have long since paid Colonel Buford for this land warrant, and long before any transaction (as well as recollected) between Shane and witness place by the bond here referred to.

Question by complainant. Whether, at the time you entered into this agreement with Shane, did you, or did you not, represent to him that you

held the equitable claim to this land, and that you never had encumbered it by sale?

Answer. I cannot say what has been our different conversation on this subject, but if I had been conscious of a perfect equitable right, I would not have hesitated to have sold and conveyed my equitable interest in this land.

Question by same. Did you or did you not state to Shane, that, if ever Johnston or Smith obtained this warrant from you, it must have been in one of your imprudent moments, when you knew it not?

Answer. I have no recollection of making such a statement at any time.

Question by same. Did you or did you not receive a note of two hundred dollars of Mr. Shane in part payment of this land?

Answer. Not as I consider it; Mr. Shane gave me his note for perhaps two hundred dollars or near that sum; this note was given me in consequence of my giving him the bond, with the condition here before spoken of; I never considered that I sold this land to Shane.

Question by same. When you sold the warrants, do you or do you not recollect whether any power of attorney was given by you to the purchasers?

Answer. I do not recollect if I did sell this warrant of Buford. I have no recollection of any power of attorney, or for the other warrants I then held.

Question by same. Do you or do you not recollect the time you were in Philadelphia with the warrants?

Answer. I am not certain, perhaps in the winter of 1800 and 1801.

Question by same. Are you or are you not acquainted with Colonel James Johnston, late of Ohio, and were you acquainted with him in the above years?

Answer. I am acquainted with him, and believe I saw him in the above years in the winter, at Philadelphia.

Question by same. At this time, in Philadelphia, what was the price of these land warrants?

Answer. I do not recollect.

Question by the same. What did you pay Col. Buford for this warrant?

Answer. I think upwards of one hundred dollars. I think he held my bond or note, as well as I recollect. I paid him through Mr. Pope, of Highland county, Ohio.

Question by the same. Did you or did you not keep a copy of the bond you gave to Shane?

Answer. I did, and here produced it, made at the time, and believe it to be a true copy; and it is here enclosed, marked "exhibit A, James Finley."

JOHN S. WILLS.

Know all men by these presents, that I, John S. Wills, of the town of Columbus, State of Ohio, am held and firmly bound unto Abraham Shane, of New Philadelphia, State aforesaid, his heirs, executors, and administrators, in the sum of one thousand dollars, lawful money of the United States, for the payment of which I bind myself, my heirs, executors, and administors, this 2d day of October, in the year of our Lord 1815.

The condition of this obligation is such, that the said John S. Wills, nor his heirs, executors, or administrators, shall not, at any time hereafter, commence suit, either in law or equity, against the said Abraham Shane, his heirs, or any person purchasing under him, for five hundred acres of

land lying in the county of Tuscarawas, in the State of Ohio aforesaid, described as follows, lots No. 17, 18, 19, 20, 21, in the 8th township 1st range, patented to Abraham Buford, United States' military district, then this obligation to be void, otherwise to remain in full force and virtue.

In testimony of which, I, the said John S. Wills, have set my hand, and affixed my seal, this 2d day of October, 1815, as aforesaid. Witness, a copy.

JOHN S. WILLS. [SEAL.]

State of Ohio, Brown county, ss.

I certify, that, at the house of Hugh Lemon, in the town of Ripley, in the county aforesaid, at eight o'clock A. M., John S. Wills, having personally appeared, and been carefully examined, cautioned, and sworn, to testify the whole truth, &c. touching a certain cause now depending and undecided in the seventh circuit court of the United States for the district of Ohio, wherein James E. Smith is plaintiff, and Abraham Shane and Return J. Meigs are defendants, deposed and testified to the matters and things stated and set forth in the above deposition, which was reduced to writing by me, and subscribed by the said deponent, John S. Wills; I also certify that the above named John S. Wills lives at a greater distance than one hundred miles from Columbus, Ohio, which is the reason of the above deposition being taken; that I am not of counsel or attorney to either of the parties to the abovementioned cause, nor interested in the event of said suit; and that neither of the defendants to said suit, nor their attorney or attorneys, reside, live, nor are they (as I verily believe) within one hundred miles of Ripley, in Brown county, Ohio, and therefore no notice was given them of the taking of the same; and that the said deposition was taken at the request of James E. Smith.

JAMES FINLEY, [SEAL.]
Associate Judge of Brown co.

The State of Ohio, Brown county, ss.

I, William Shepherd, clerk of the court of common pleas in and for said county, do hereby certify that James Finley, Esq., before whom the foregoing deposition appears to have been taken, who has certified the same, was at the time the same was done, and still is one of the associate judges of the court of common pleas in and for the county aforesaid, duly commissioned and qualified, and that full faith and credit is and ought to be given to all his official acts as such.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the court aforesaid, at Georgetown the 23d day of December, A. D. 1826.

WILLIAM SHEPHERD, [SEAL.]
Clerk Brown common pleas, Ohio.

Seventh circuit court of the United States, and district of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS.

State of Ohio, Tuscarawas county, ss.

Personally appeared before me, Nicholas Neighbour, one of the associate judges of said county, at the court-house, in said county, at New Philadelphia, on the first day of December, A. D. 1824, at 2 o'clock P. M., the

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witness, George W. Canfield, clerk of the court of common pleas for said county, who being first cautioned, examined, and sworn, to testify the whole truth, &c. touching the above cause, deposeth and saith, that, some time in the fall of the year 1820, the complainant, James E. Smith, and General Abraham Shane, one of the respondents, were in conversation at his office, in New Philadelphia, concerning a tract of land lying in Tuscarawas county, granted to Colonel Buford, containing 500 acres, which the said Shane had purchased, and then held possession of; said Shane in such conversation stated, that, previous to the purchase of said tract of land by him, he called on said Smith, at his office in Philadelphia, and inquired if he had not some western lands that he wished to dispose of; to which said Smith replied, that he had some lands in the State of Ohio, and that if he (said Shane) would call at his office the next day, he would attend to his inquiries; he (Shane) attended the next day, and said Smith handed to him a (canvass) bag, containing a quantity of patents, deeds, &c.; he (Shane) having perused them to his satisfaction, asked said Smith if he had any other titles than what were here; to which said Smith either evaded giving him an answer, or said he had not; that he (Shane) then left his office; such was the conversation, or the purport thereof, at that time, as near as this deponent now recollects.

1. Question by complainant. Was the substance of that conversation reduced to writing? if so, by whom and when?

Answer. Yes, the complainant wrote to me from New Lisbon, a few days after the conversation had taken place, and recapitulated said conversation in his said letter, requested me to examine the same, and, if correct, to preserve it, as it was matter that he might wish to avail himself of as testimony.

Q. by B. M. Atherton, defendants' counsel. Is the above deposition in your handwriting?

A. Yes.

2. Q. Is it copied from the statement so made to you by Mr. Smith?

A. It is, so far as the same is consistent with the conversation.

3. Q. Is there any difference between your deposition above written, and the statement so made by Mr. Smith? if so, state it.

A. There is no material difference.

4. Q. Have you that letter, or a copy of it, by you?

A. I think the letter is in my possession, but cannot now find it; the copy or substance thereof is now before me, in the handwriting of Mr. Smith.

5. Q. Please to insert that copy.

NEW LISBON, 15*th September*, 1820.

G. CANFIELD, Esq.

SIR: Since I left you it has occurred to me that it may be proper to ask of you to recollect and bear in mind the conversation between General Shane and myself at your office. I will beg leave to state it, if correct. Gen. Shane stated that he called at my office in Philadelphia, and inquired if I had not some western lands for sale, that I told him, if he would call the next morning, I would make him acquainted with what I had. Accordingly the next morning he called. I then put into his hands a canvass bag, full of patents, &c. for his perusal, and he examined them; that he never made me any offer for any lands, nor did I set any price on them. I believe you will agree with me that this was his statement. Should you

agree with me that this is correct, please to note it, or correct it, and hold it until I have the pleasure of seeing you again.

In haste, yours respectfully,

(Copy.) J. E. SMITH.

6. Q. Did Mr. Shane state, at the time you refer to, that Mr. Smith exhibited to him any title to the Buford tract, or to my lands in Ohio?

A. I do not recollect that he, at that time, said any thing to that effect. But I have heard General Shane say at that time, or subsequently, that he saw the patent for said tract of land in the possession of Mr. Smith at the time above alluded to, and also a number of other patents and blank deeds.

7. Q. Have you not heard Mr. Smith say that he had no title to the Buford tract?

A. I have heard him say that he had not received a deed or conveyance from Buford for the same, but that he had the equitable title thereto. I have also heard Mr. Smith say that Col. Johnston was concerned with him in buying and selling lands in Ohio; that he had placed the utmost confidence in him, and that he had been deceived and disappointed by him.

8. Q. At the time of the conversation mentioned in the foregoing deposition, did not Mr. Shane state to Mr. Smith, that he (Smith) became possessed of Buford's land warrant as an agent, for the purpose of locating them merely, and not as his own property? and did Mr. Smith deny it?

A. I have no recollection at present of such conversation. It might have taken place.

9. Q. Who was the reputed owner of the Buford tract before the same was purchased by Mr. Shane?

A. The general report was, that it belonged to Col. Johnston?

10. Q. Are you not the recorder in Tuscarawas county?

A. I am.

11. Q. Are there any other lands in Tuscarawas county, or elsewhere, in Ohio, which were so reported to belong to Col. Johnston, which are now claimed by Mr. Smith? and if so, state whether Smith has any title thereto, so far as you know, from the records, and from Mr. Smith's confession.

A. There is a release on record in said county from James Johnston to James E. Smith, executed the 30th day of May, 1821, and received June 15th, and recorded October 27th, 1821, releasing to said Smith 43 lots of land in said county, containing each 100 acres, in which is included the Buford tract. There is no title on record for any of the above lands from the patentees, or any other person, to the said Johnston, on the records of said county; neither is there any other title than said release from any person to said Smith, except for two lots of 100 acres each, purporting to be executed by Lieutenant William Knox to said Smith, and dated the 10th day of October, 1820, and recorded in December, 1823. There is 800 acres of land transferred to said Smith in said release, claimed by the heirs of General John Stark, deceased; also, 200 acres claimed by the heirs of Lieut. Archibald Stark, deceased; for which said Smith acknowledges he has no conveyance for from any other than Johnston, but that the patents are in his possession, and that he located said lands. There is also 500 acres included in said release, which were sold for taxes on the 24th day of February, 1823, for which deeds have been made, agreeably to law, to the purchasers, and recorded in said county. 300 acres of said land were

charged on the tax duplicates to said James Johnston, 100 to James Coutter, and 100 to William Renyolds; the taxes, &c. due were for the years 1820, '21, and '22.

12. Q. Has not the right of said Smith and Johnston to said lands claimed by them in the county of Tuscarawas, and elsewhere, in said State, by people generally, been considered doubtful? if so, how long?

A. They have as to said county; these doubts have existed as far back as 1815 (and perhaps earlier) to the present time; these doubts have arisen from the representation of persons unconnected with the parties in this suit, and acquainted the lands in this county; it may be these doubts have been strengthened by the assertions of General Shane to that effect.

13. Q. Has not Johnston heretofore, and has he not now, the reputation of being a dishonest man, particularly in his land transactions? and have you not heard Mr. Smith, the complainant, say that Johnston was a dishonest man?

A. Such has been the assertions of people generally whom I have heard mention any thing about it. I have also heard Mr. Smith say that he had placed the utmost confidence in said Johnston, and that he had been very much disappointed in him, that he had forfeited the trust and confidence placed in him.

14. Q. Do you not know, or have you not understood, that James Johnston at some time sold lands to one Sills and to one Harris, for which he was unable to give a title? if so, state what lands; whether Harris and Sills did not each pay to Johnston the purchase money of the respective lands, and whether Johnston ever repaid them, or either of them, and if so, how; state whether it be of your own knowledge or from report.

A. I have heard David Johnston, son-in-law to said Sills, and others, say, that said Johnston sold to said Sills a part of the Stark tract, say about 250 or 60 acres; that said Sills and James Johnston made their agreement in writing, and deposited the same in the hands of one Mr. McIntire, of Zanesville; that said Sills paid to said Johnston 2 or 300 dollars of the purchase money; that said agreement was lost; that said Johnston never made a deed for said lands to said Sills; that he holds said Johnston's receipt for the money paid to him on said purchase; that he has never paid or satisfied him for the same; that he has made an improvement on said lands; has lived thereon about 24 years. I have also heard Mr. Smith say that said Johnston sold to said Harris a tract of land belonging to one Thos. Mitchell, of Philadelphia, containing about 600 acres; that he was not able to make a deed therefor; that he had received from said Harris $1,500 of the purchase money, and that said Johnston gave to Harris, in order to satisfy him for said money and his disappointment, 2,000 acres of land in Delaware county, and four hundred acres in Tuscarawas county, and also 400 dollars paid to C. Hammond, attorney, which was acknowledged as full satisfaction by said Harris. This settlement took place in the year 1820, between said Johnston and Harris. I expect I have heard Mr. Smith say that he would not pay back to said Johnston the money so advanced and paid by his father-in-law to said James Johnston. The above transaction of Johnston with Sills and Harris were of public notoriety.

2. Question by complainant. How long has said Sills lived on said land?

Answer. I have heard Johnston, the son-in-law of said Sills, say that they raised corn on said land in the year 1800, and that they have lived there ever since.

3. Q. Have you ever heard said Johnston or Sills say that they ever paid any rent for the use of said land to any person?

A. I have not. I know that said Sills and Johnston paid the taxes on 255 acres of land in the Stark tract from the year 1808, or thereabouts, to the present time, on the receipt duplicate of said county.

4. Q. Have you not heard me say that I would submit the differences in dispute between said Sills and Johnston, on account of the contract so made between them, to two or three of his neighbors?

A. I have.

5. Q. Have I submitted to the sale of said lands so sold for taxes?

A. I have heard Mr. Smith say, in relation to said lands, that he was not satisfied with the sale, that he intended to have an investigation, and that he intended to commence suit for the recovery thereof, in case he could not obtain them otherwise; and further this deponent saith not.

GEORGE W. CANFIELD.

Sworn to and subscribed before me, the 4th day of Dec., 1824.

State of Ohio, Tuscarawas county, ss.

I do hereby certify, that, at the court-house, in New Philadelphia, in said county, the abovenamed Geo. W. Canfield, having personally appeared, and being carefully examined, cautioned, and sworn, to testify the whole truth touching a certain cause now depending and undecided in the 7th circuit court of the United States for the district of Ohio, wherein James E. Smith is plaintiff, and Abraham Shane and Return J. Meigs are defendants, deposed and testified to the matters and things stated and set forth in the above deposition, which was reduced to writing by the said deponent in my presence. I also certify that a notice was made out, and personally served on Abraham Shane. On the 29th day of November, 1824, the parties met agreeably to notice, and Smith, in person, and said Shane, by B. M. Atherton, his counsel; and by adjournment from day to day, the said parties being present each day throughout said examination, which notice is annexed to the deposition of Abraham Knisley; and that I am not of counsel or attorney to either of the parties to the abovementioned cause, nor interested in the event of said suit. Said deposition taken at the request of James E. Smith.

NICHOLAS NEIGHBOUR,
One of the associate judges for said county.

State of Ohio, Tuscarawas county, ss.

I, Geo. W. Canfield, clerk of the court of common pleas for said county, do hereby certify that Nicholas Neighbour, Esquire, before whom the depositions of Abraham Knisley and Geo. W. Canfield appear to have been taken, and who hath subscribed his name thereto, was, at the time of the taking of the same, and still is, one of the acting associate judges of the court of common pleas within and for said county, duly commissioned and qualified, to all whose official acts as such full faith and credit is due and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at New Philadelphia, the 4th day of Dec. 1824.

GEO. W. CANFIELD, *Clerk.* [L. S.]

Seventh circuit court of the United States, district of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS.

Take notice, that the plaintiff in this cause will proceed to take the deposition of James Johnston, be bene esse, before me, at my office, State of Pennsylvania, in the city of Pittsburg, and on Saturday, the 4th day of Dec. next, at 10 o'clock A. M., to be read in evidence in the above cause: please to be present, and put interrogatories if you think fit.

JOHN DARRAH, *Mayor city of Pittsburg.*

To JOHN M. GOODENOW,
Attorney for Abraham Shane and Return J. Meigs.

State of Ohio, Jefferson county, ss.

On the 27th day of November, A. D. 1824, Thomas Amies, jun. personally appeared before me, Alex. Sutherland, a justice of the peace within and for said county, and being duly sworn, saith, that, on this day, at the house of John M. Goodenow, Esquire, attorney at law, in Steubenville, in said county, he delivered the original notice, of which the above is a true copy, to said John M. Goodenow.

T. AMIES, JUN.

Sworn and subscribed before me,

R. SUTHERLAND, *J. P.*

Seventh circuit court of the United States, district of Ohio.

JAMES E. SMITH,
vs.
ABRAHAM SHANE and RETURN J. MEIGS.

Take notice, that the plaintiff in this cause will proceed to take the deposition of James Johnston, (de bene esse,) before me, at my office, State of Pennsylvania, in the city of Pittsburg, and on Saturday, the fourth day of December next, at 10 o'clock A. M., to be read in evidence in the above cause: please to be present, and put interrogatories if you think fit.

JOHN DARRAH, *Mayor of Pittsburg.*

The State of Ohio, Tuscarawas county, ss.

Personally appeared before me, Alexander McConnell, one of the justices of the peace of the county aforesaid, came Samuel Lamberson, who, being duly sworn according to law, deposeth and saith, that he served the original (of which this is a true copy) on Abraham Shane, in the town of New Philadelphia, on the 29th day of November, A. D. 1824, at the hour half after eleven o'clock A. M.; and further this deponent saith not.

SAMUEL LAMBERSON.

Sworn and subscribed to before me, this 29th day of November, A. D. 1824.

ALEXANDER McCONNELL, *J. P.*

In circuit court of the U. S., seventh circuit, and district of Ohio.

ABRAHAM SHANE and RETURN J. MEIGS,
ats.
JAMES E. SMITH.

Interrogatories to be put to Col. James Johnston, on his examination as a witness in this cause, before John Darrah, Esquire, mayor of the city of Pittsburg, on the part of defendants.

1. When and how did your partnership commence with James E. Smith, the complainant? what were the terms of it? and when and how did it dissolve, and what were the terms of dissolution?

2. When and where did you purchase or pretend to purchase of John S. Wills the said military land warrant of Abraham Buford? what did you give for it? and in what did you make payment?

3. Did you ever, at any other time, enter into any further agreement, or enter into any other further conversation or negotiation with said Wills concerning said warrant? if so, state particularly.

4. Did you ever receive or hold any sort of a title or script whatever from John S. Wills to said warrant? if so, state what it was, and where it now is.

5. When you purchased, as you say you did, of Wills, was he under the influence of spirituous liquor, in a state of inebriation, or was he perfectly sober?

6. Did defendant Shane ever offer to purchase said military warrant of you? if so, state when and where that offer was made, and its particular terms.

7. Have you not, for 25 years past, been dealing and speculating in land titles in the State of Ohio? and during that time have you not frequently pretended to claim land to which it was found you had no title?

8. Have you not heretofore, and before the dissolution of your partnership with Smith, brought suit for the land upon which the said military warrant was located in your own name only against said Shane? if so, had Smith, at that time, any interest in said warrant or land?

9. Have you not now the same interest you ever had in said warrant and land?

10. Did you ever pay the taxes on the land upon which said warrant was located? if so, state how much, and when and where you paid it, and to whom and in what year you paid the last.

11. Do you know who located the said warrant upon the land in Tuscarawas county? if so, state what you may know of that fact of your own knowledge.

12. Do you know how the name of Buford became endorsed upon said warrant? if so, state all you know of that fact.

13. Did you ever hold from Buford, Wills, or Gibson, a single script of writing, or even a signature for said warrant or deed? if so, state what it was, and where it now is.

STEUBENVILLE, *Nov.* 27, 1824.

SIR: This evening I received a notice from your worship, stating that Col. James Johnston's testimony would be taken before you on Saturday next, to be read in the case of Smith *vs.* Shane and Meigs. Our court is now sitting, and I have but a moment, and hardly that, to devote to this

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matter. However, I have sketched a few interrogatories in great haste, and forwarded them, in hopes you will be so good as to put them to the witness, and take his answers. In so doing you will oblige, sir,

Your humble servant,

JNO. M. GOODENOW.

JOHN DARROH, *Mayor*.

The deposition of Col. Abraham Buford, taken at the tavern of James H. Mahoney, in the town of Georgetown, upon the 18th day of December, in the year 1826, to be read as evidence upon the trial of a suit in chancery, now pending in the 7th circuit court of the United States for the district of Ohio, wherein James E. Smith is complainant, and Abraham Shane is defendant. This deponent, being of lawful age, and first duly sworn, deposeth and saith, said deposition being taken upon the part of the defendant, that in the early settlement of Ohio I placed a United States' warrant of 500 acres of land into the hands of John Gibson to locate or have located for him. That, some time after this, deponent applied to said Gibson to know what he had done with said warrant; that he informed him that he had understood from him, the deponent, that he wished to sell said warrant, and that he had sold it accordingly. That this deponent informed him, said Gibson, that he lived out of the way of said land, and that he was satisfied with the sale of it; which sale, I understood, was made by the said Gibson to John S. Wills, the son-in-law of the said Gibson. Some time after I received a letter from the defendant, showing and stating his right to said land, which letter I answered, acknowledging that I had passed away my right to said land through the said Gibson. In my answer to the letter of defendant, I think I named something about my never having received payment for said land. After which an order came to my hands upon a Mr. Nat. Pope for the purchase money of said land, which order I prosecuted, and received payment. I think Mr. Wills gave an order upon Nathaniel Massie for the money, and he, Massie, gave me an order on Pope, who paid it. I do not now recollect any other circumstances or occurrences in relation to said transaction, until the defendant came to this State, and applied to me for the deeds or conveyances for said land, by showing me papers which *con*denced his claim. Amongst which was a paper from John S. Wills, showing me that the defendant had a right to receive the conveyance, together with Judge *Jother* Meigs, and that it was the wish and direction of John S. Wills that I should make to them the conveyances accordingly. Deponent further states that he knew the character of Judge Meigs, and in consequence thereof was less ceremonious in making the conveyance. Deponent further states that when the defendant, Shane, called upon him for the deed, he recollects that he named to him something as to the payment of the purchase money, when this deponent informed him that the purchase money was then either paid, or that he had the order upon Pope, with which he was satisfied. This deponent further states that Judge Bletcher has heretofore taken his deposition in this suit, in which he recollects he called the paper of which this deponent has above spoken, given by Wills, and prosecuted by defendant, Shane, when he obtained the conveyances, an order; that this deponent, at the time, objected to the term order, and would not now give to said paper any appellation in particular, but it was of the effect and purport which he has above stated in this deposition. That this deponent has now no recollection that he ever

filed any paper in relation to said transaction, and that he does not now recollect what became of said paper prosecuted to him by the defendant from Wilks, upon which he made the deed. Deponent further states that he had the paper aforesaid in his hands, and read it. This deponent further states that when the defendant, Shane, called upon me, as above stated, he recollects that he showed him a certificate or certificates from the General Land Office, certifying that five lots of 100 acres each were located, in the name of this deponent, in the United States' military district, but that this deponent does not recollect that the defendant then showed him any letters which he had previously written to him, said defendant. This deponent, in answer to an interrogation of the defendant, says that he has not formed any prejudices against him from representation made to him by Jas. E. Smith or others, from which he would be disposed to say any thing that would either injure or benefit him, unless it was true. That the parties are all strangers to him; and his wish is that justice may prevail betwixt them, and nothing else. Deponent further says, that when the defendant, Shane, was at his house, his conduct open, frank, and fair, and perfectly correct and proper; and further saith not.

A. BUFORD.

STATE OF KENTUCKY, SCOTT COUNTY, set.

The above deposition of Abraham Buford was taken, subscribed, and sworn to before me, a justice of the peace for the county and State aforesaid, at the tavern of James H. Mahoney, in the town of Georgetown, county of Scott, and State of Kentucky, upon the 18th day of December, 1826. Given under my hand and seal, this 18th Dec., 1826.

J. T. STEVENSON, *J. P.* [SEAL.]

1st Question. Did you ever say to Shane, in the presence of any person, when asked by Shane if you ever sold the land warrants you got of Col. Buford to Colonel Johnston, that you never had, (within your recollection,) and that, if ever Johnston got them from you, it must have been in some of your imprudent moments?

Answer. I have no recollection of saying so.

2d. Did you not always hold out the idea to Shane that you never had sold the warrants to Col. Johnston?

Answer. I always held the idea that I had been doubtful whether I ever sold the warrant or not.

3d. Do you not remember, that when Shane met with you at Petersburg, in Virginia, it was agreed upon between you and Shane that he, Shane, should go to Colonel Buford, and get a conveyance from him (Buford) for the land in question, and that the consideration for the land should be agreed upon when you and Shane met in the State of Ohio?

Answer. I have no recollection of any such agreement, am inclined to think none such took place.

4th. When you returned to Zanesville, in this State, did you not write to Mr. Shane that you had understood that he, Shane, was on to Kentucky, on the subject of the Buford lands? did you not, in your letter to Shane, state, that on an examination of your papers you found the title of the land was in you, and not in Buford?

Answer. On my return through Zanesville I heard from, I think, Major Munsel, and you since had obtained from Col. Buford a deed or deeds for

the land patented to Col. Buford; upon receiving this information, I might be not have written Home something about the equitable title to this land in me; but let me have written what I might, Home was apprised by me, at different times, that in some way I would have my claim to this land, but in no way would I convey it. It is possible I might have said, in my letter to him, that the title was in me, but if so, he was well apprised; the answer I intended to put this lien, if any, from me, as I believe.

5th. Do you not remember that Shane always stated to you that the legal title was in Col. Buford, but that the equitable title was in you, provided you would pay Buford for the warrants, in as much as Col. Buford had always informed him, Shane, that he had disposed of the warrants to you, but had not received pay for them from you?

Answer. I do not know, with certainty, who told me first I had the equitable title to this land, it might have been Home, but I do not recollect of being told that this equity was depending on my paying Buford for the warrant. I have long since paid for the warrant, this I think a Mr. Pope, but cannot recollect every thing about the transaction.

6th. Did not Shane pay you eleven hundred dollars, in the following manner, to wit, one hundred dollars in store goods, out of General A. Johnston's store in Coshocton, in October, 1815, and in Zanesville on the folfowing day he, Shane, paid you eight hundred dollars, and at the same time gave you his note for two hundred dollars, which he afterwards paid to Abraham Shepherd?

Answer. Shane, as well as recollected, paid me the money, as stated in this question, and in the manner; but this money was paid in consideration that I would give him a bond, with a penalty, not to disturb his right to this land acquired of Buford; this bond was left with Shane, and I think a copy of it with my deposition formerly taken in this suit in this transaction; I kept a copy of the bond given, and also took a release of Shane. I have been frequently interrogated in Sawyers's office, and not about this transaction; it is not in my power to recollect all I have said.

7th. In your answer, at the 5th interrogation, you state that the purchase money of the warrant from Buford had been long since paid—be good enough to state whether or not the whole of the payments were made by you previous to your and Shane's agreement; and what part, if any, was unpaid.

Answer. As well as recollected, my arrangement to pay Col. Buford through Mr. Pope was made before I gave Shane the bond not to disturb his title this land acquired from Col. Buford; from my present though faint recollection, Col. Buford gave up my bond, and took Mr. Pope for the amount, who was indebted to me by the sale of some land; this amount seems to me to be all I owed Col. Buford.

JOHN S. WILLS.

STATE OF OHIO, BROWN COUNTY, ss.

Personally before me, the undersigned, one of the acting justices of the peace in and for the county aforesaid, came the deponent, John S. Wills, on the 12th day of Dec., A. D. 1826, who, being duly sworn according to law, deposeth and saith, that the aforegoing answers to the seven interrogatories is true, to the best of his knowledge and recollection. Sworn and subscribed to before me, this 12th day of December, A. D. 1826.

JOSEPH STABLETON, *J. P.* [SEAL.]

THE STATE OF OHIO, BROWN COUNTY, ss.

I, William Shepherd, clerk of the court of common pleas within and for the county aforesaid, do hereby certify that Joseph Stableton, Esquire, before whom the foregoing deposition of John S. Wills appears to have been made, and who hath subscribed his name thereto, now is, and was at the time of doing the same, one of the acting justices of the peace within and for the county aforesaid, duly commissioned and qualified, and that full faith and credit are due and ought to be given to all his official acts as such, as well in all courts of justice as thereout.

In testimony whereof, I have hereunto set my hand, and affixed my seal of office, at Georgetown, this 12th day of December, A. D. 1826.

WILLIAM SHEPHERD, *Clerk.* [L. S.]

The deposition of Abraham Buford, taken at the office of William West, in the town of Lexington, State of Kentucky, to be read as evidence in the suit in chancery depending in the circuit court for the district of Ohio, wherein James E. Smith is complainant, and Abraham Shane and others are defendants, who deposeth and saith, that a few years after taxation upon lands commenced in the State of Ohio, he put into the hands of Col. Thomas Gibson a military land warrant for five hundred acres, issued to this deponent for his revolutionary services by the United States, to sell or have it located; which warrant said Gibson sold to his son-in-law, John S. Wills, as said Gibson informed this deponent. This deponent states before he made the deed to Shane and Meigs, he got, as he believes, an order on Nath. Pope, drawn by Nath. Massie, for the price of the warrant. Who gave him the order, he does not know, but he believes that he did not receive payment from Pope until after he made the deed aforesaid, the deponent being unable to state the precise date of receiving the order of payment on it, but believes he received the order before he made the deed, and believes he did not receive the payment until after he made the deed to Shane and Meigs.

A. BUFORD.

THE STATE OF KENTUCKY, AND COUNTY OF FAYETTE.

I, William Wood, one of the justices of the peace in and for the county of Fayette, in the State of Kentucky, duly commissioned, sworn, and acting as such, and by virtue of my said commission, being one of the judges of the county court in and for said county, do certify that the within deponent, Abraham Buford, on this 27th day of September, 1827, appeared before me, at my office, in the town of Lexington, in the State and county aforesaid, and being first duly cautioned and sworn by me to tell the whole truth, did, in my presence, give and subscribe the said deposition; the whole of which being reduced to writing by me, in presence of and by direction of said witness. I further certify that I am neither agent, attorney, or counsel, for either of the parties, nor am I in any manner interested in the event of said cause. I also certify that I caused no notice to be served upon the defendants, or either of them, because neither they, nor any attorney or agent of theirs, or any of them, (known to me,) resides within one hundred miles of the place of taking said deposition. I further certify that the residence of said witness, and the place of taking the deposition, are more than one hundred miles from Columbus, in the State of Ohio. All of

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which is certified to said court as the cause and manner wherefore said deposition was taking.

Given under my hand and seal, this 27th day of September, 1827.

W. WEST, *J. P.* [SEAL.]

Circuit court of the United States, seventh circuit, Ohio district, January term, 1826, *Monday, 9th.*

JAMES E. SMITH, complainant,
versus
ABRAHAM SHANE and RETURN J. MEIGS, defendants. } *In chancery.*

On motion, and the court being satisfied of the death of Return J. Meigs, one of the defendants in this cause, leave is granted to the complainant to file a bill of revivor, whereupon the said complainant, by G. Swan, Esq., his solicitor, filed his said bill of revivor, making Sophia Meigs and Mary Ann Jackson parties defendant; and it appearing to the court that said defendants are not residents of this State, it is ordered that notice of the pendency of this suit be given, by publishing the same in the Ohio State Journal and Columbus Gazette, a newspaper printed in the town of Columbus, in this district, at least nine weeks, successively, previous to the next term of this court; and a further notice, that unless the said defendants appear at the next term, and plead answer or demur to the bill in this cause, the same as to them will be taken as confessed, and the matters and prayer thereof will be decreed accordingly.

Attest: WM. KEY BOND, *Clerk.*

COLUMBUS, *March* 16.

Circuit court U. S., 7th circuit, district of Ohio, ss.

Personally appeared in open court Philo. H. Olmsted, and being duly sworn, says, that an advertisement, a copy of which is hereunto annexed, was published nine weeks successively in the Ohio State Journal and Columbus Gazette, (a newspaper printed at Columbus, Franklin county, Ohio,) between the sixteenth day of March, 1826, and 30th June, 1827.

P. H. OLMSTED.

Sworn to and subscribed in open court, this 23d July, A. D. 1827.

WM. KEY BOND, *Clerk C. C. U. S. 7th C.*

And thereupon this cause was set for hearing, upon bill, answers, replication, exhibits, and testimony, and was agreed by counsel; but the court being of opinion that it is essential to a just decision of the same to ascertain the time when payment was made by John S. Wills to Abraham for the land warrant for five hundred acres of land granted by the United States to said Buford, and that on that point the present testimony is deficient, the court do therefore open this cause, to the end that testimony may be taken by the parties respectively, on the point aforesaid, alone; and the cause is continued until the next term.

And afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and twenty-seven, this cause was further continued.

And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and twenty-eight, came again into court

here the said parties by their counsel aforesaid; and thereupon the said Abraham Shane files in court here his amended answer in the premises aforesaid, as follows, to wit:

United States' circuit court for 7th circuit, Ohio.

ABRAHAM SHANE *et. al.*,
als.
JAMES E. SMITH.

Abraham Shane, one of the defendants in this cause, prays the court here for leave to add to and amend his answer heretofore filed in this cause, and states on his solemn oath, that since filing his said answer, to wit, on the 3d day of July, 1828, on a further and more severe search and examination of his papers, he discovered, and herewith exhibits, the bond mentioned in his original answer, given by said John S. Wills to this respondent, and dated 2d day of October, 1815; and he also herewith exhibits, and prays the same may be received as a part of his answer, a brief or memorandum, made by said Wills, and in his own handwriting, stating four points of law, upon which the said Wills contended he had a right to resist any pretended claim which Johnston or Smith might have to said land warrant, and which is marked with J. S. Wills's name on the back, and No. 5, and which brief or memorandum the said Wills gave to this respondent; at the time, said Wills declared that if Johnston had the warrant, he obtained it from him in some of his imprudent moments, and before this respondent finally concluded the bargain of purchase with said Wills. This respondent also herewith exhibits sundry letters of the said J. S. Wills, namely, one dated Zanesville, May 31st, 1815, one dated Columbus, April 18th, 1816, and one dated West Union, October 25th, 1815, both the letters referring to payments to be made by this respondent for the said land; and also one other letter, dated Columbus, March 20th, 1817, and another therein referred to, dated Washington City, 10th Nov. 1816; which said several letters, and the said brief or memorandum above referred to, were found at the time of the aforesaid search and examination, and would have been exhibited with this respondent's original answer, had they then been within his reach and knowledge; and for the reason that the aforesaid bond, brief or memorandum, and letters, have been discovered since the filing of his said original answer, and he is advised they may be material to the full and fair investigation of this cause, and that it is therefore his duty to present them to the court, he prays the same may be received and filed, and considered with his said original answer, and the exhibits therewith filed.

A. SHANE.

Before me, Andrew Seaton, a justice of the peace of the county of Tuscarawas, and State of Ohio, personally came Abraham Shane, whose name is subscribed to the above statement or supplemental answer, who, on his solemn oath, deposeth and saith, that the matters and things therein stated are true.

A. SHANE.

Sworn to and subscribed before me, 4th July, 1828.

ANDREW SEATON.

71.

The State of Ohio, Tuscarawas county, ss.

I, James W. English, clerk of the court of common pleas for said county, do hereby certify that Andrew Seaton, Esquire, before whom the attached deposition was made, was at the time thereof, and now is, an acting justice of the peace in and for said county, duly elected, commissioned, and sworn, to act as such, and to whose official acts full faith and credit are due.

In testimony whereof, I have hereunto set my name, and affixed the seal of my office, at New Philadelphia, the fourth day of July, in the year of our Lord one thousand eight hundred and twenty-eight.

JAMES W. ENGLISH, *Clerk.*

Exhibits referred to in the foregoing answer, to wit:

1st. The law and decision of courts have made it necessary, to bind contracts respecting lands, that they should be in writing.

2d. Decisions of courts have made land warrants real estate.

3d. A bill in chancery to enforce a contract respecting the sale of lands is demurrable if it does not state the contract to be in writing, it being uncertain.

4th. If a land warrant is a chattel, it must pass by assignment, and not to bearer.

ZANESVILLE, *May* 31, 1815.

Major SHANE. Sir: I am here on my way from the eastward, and shall be at Franklinton in two days, and remain there ten or twelve: will you come on there in that time? I am anxious to see you on the business on which we have much conversation. I have heard of your being in Kentucky, and have supposed you went to Col. Buford, and properly on the subject of the 500 acres patented in his name, but from an examination find is not his but my own. Let me hear from you if you cannot come to Franklinton.

Yours, respectfully,

J. S. WILLS.

COLUMBUS, *April* 18, 1816.

DEAR SIR: I have drawn on you in favor of Lt. Fredericks for twenty-five dollars: I have done this in consequence of your note to me, given in the hands of Mr. Ab. Shepherd, being unpaid. I saw Mr. Shepherd lately: he expected me to pay the balance due if you did not, which I promised to do as soon as possible. Should you take up this order, which I wish you would by all means, I would be glad you would remit him or me the balance, so that it may be paid. I expect to see Mr. S. shortly, and should you pay this order let me know, that I may pay over to him this amount, if so.

In haste, very respectfully,

JOHN S. WILLS.

Col. ABRAHAM SHANE, *New Philadelphia.*

WEST UNION, *October* 25, 1815.

DEAR SIR: The demand for the land near this place, entered in the name of Jacob Parker, (which I have purchased,) is great indeed; had I the legal title completed, a greater part could be sold immediately. A Mr. Bradford,

brother to Gen. Bradford, of this place, has seven thousand dollars; he tells me he has seen this land, and would purchase a part at a reasonable price, pay all the money in hand. I have prevailed on him to keep some of his money for a time for this purpose. By February next I have told him I should be prepared to sell. As you will be equally concerned with me, upon your advancing three thousand six hundred dollars by the 15th of November next in this speculation, let me again urge you every exertion to be ready with the money by that time, particularly as I have lost sight of every other resource; depending entirely on you, agreeably to contract. I wish you to be at Chillicothe by the 15th of November next. I'll be there if possible; if not, stay until I am; a day or two will not make much difference; but should you incline to go away, you can leave the money with Mr. Woodbridge, cashier of the bank, with such instructions to pay me as you may think safest for your own purpose. However, we must see each other before I start to Virginia: but be ready; do not fail. The speculation, if you comply in advancing the money, is great, too large to miss. My interest in this business is yours: provided you comply, all is safe: if you fail, all may be gone. I wish you to send to Mrs. Wills, Columbus, by the first of next month, the two hundred dollars, the amount of your note: I have left demands to be met by it. Mrs. Wills is authorized to give up the note on the payment of the money.

In my last letter to you, I mentioned having received a letter from Mr. Baker, administrator of Col. Jacob Parker's estate, on the subject of my contract with him for the purchase of Col. P.'s lands; he requires (as I before wrote you) an answer as to my compliance. I have answered him, and, in answer, stated that I'll be on by the last of December next, with the money, and literally meet my contract with him: this assurance to him was placed certain relying on your literal compliance with your contract with me. Should you fail, the injury to me would be great indeed, independent of the loss of the profit to us both; but as I always look at the best side of things, I hope for no disappointment. Write me to this place, I'll be through here on my return home, between the 10th and 13th of November next; will pass through Chillicothe. Do not forget to inform me the value of *Edglihgtone* 100 acres of U. S. military land, and of your election.

Your friend, JOHN S. WILLS.

Col. ABRAHAM SHANE,
New Philadelphia, Tuscarawas county, Ohio.

WASHINGTON CITY, 10*th Nov.* 1816.

SIR: I have to lament much indeed that you did not remain at this place until my arrival; difficulties might possibly have been removed; that at this moment presents themselves unpleasantly indeed. If you recollect, and if you do not, I do, that I have your bond payable the first of last November, for $3,666\frac{2}{3}$, in consideration of your coming into the contract for Parker's lands, that you gave me repeated assurances of paying this money, the last, that the money should be paid here, or in Virginia, so that I might comply with the purchase of these lands. To my surprise, on my arrival here, I found lodged in the hands of the Postmaster General only $2,500, and it to be paid over, under circumstances dishonorably, to the man who made them; and still more so to him, if to be found, would disgracefully yield to them. I loathe the man who could feel towards me such distrust. My objects in Virginia can be effected without the payment of your bond at this

time, you must expect, however, to pay it on my return. I have given you credit for two hundred dollars received at Woster; these observations are made with more real pain than I ever had to feel. We were friends, and, had you treated me as a man of honor, would for ever have remained so. You have not only disappointed me in your friendship, but in your character, or was mutilated by You could not have acted so had your own judgment been your director. A good hearted man seldom, indeed, never, looks suspiciously on others; I have thought your heart good. I am sorry for the course you have pursued; but he that is right will come out right.

I have the honor to be, yours, &c.

JOHN S. WILLS.

COLUMBUS, *March* 20, 1817.

SIR: Your letter of the 7th instant, directed to MRS. Wills, came to hand, and has been, with much attention, read by myself. In reply, I have but few remarks to make. Your want of confidence shows plain, by the disposition of your money, in the city of Washington, was unwarrantable the whole of your conduct in this transaction, uncandid and ungenerous; had you come openly, and told me you had reason to suspect my self-command, or had you gone to Virginia with me, (whatever your motives might have been for the journey,) my feelings would have been saved from the severest wound ever inflicted; whoever authorized the course you pursued, must largely partake of low suspicion and distrust, which never marked the character of an honest and magnanimous heart: had my conduct towards you have been the same, I could have thought it nothing less than dishonorable. You, doubtless, received my letter from the city of Washington; it is explanatory of the course I shall pursue, though I have no disposition to do you an injury; yet it is not in the power of damages to indemnify my feelings; your proffered friendship is unnecessary: no confidence can be placed where character has so strongly marked an intention to beguile. This is the only letter I shall write on this subject.

Yours, respectfully,

JOHN S. WILLS.

Col. ABRAHAM SHANE, *New Philadelphia.*

Know all men by these presents, that I, John S. Wills, of the town of Columbus, State of Ohio, am held and firmly bound unto Abraham Shane, of New Philadelphia, State aforesaid, his heirs, executors, and administrators, in the sum of one thousand dollars, lawful money of the United States, for the payment of which I bind myself, my heirs, executors, and administrators, this 2d day of October, in the year of our Lord 1815.

The condition of this obligation is such, that the said John S. Wills, nor his heirs, or executors, or his administrators, shall not, at any time hereafter, commence suit, either in law or equity, against the said Abraham Shane, his heirs, or any person purchasing under him, for five hundred acres of land lying in the county of Tuscarawas, in the State of Ohio aforesaid, described as follows, lots No. 17, 18, 19, 20, 21, in the 8th township 1st range, patented to Abraham Buford, United States' military district; then this obligation to be void, otherwise to remain in full force and virtue.

In testimony of which, I, the said John S. Wills, have set my hand, and affixed my seal, this 2d day of October, 1815, as aforesaid.

JOHN S. WILLS. [SEAL.]

Witness present:

JAS. R. MUNGON.

And thereupon the said respondents, by their counsel, filed in court here the following statement, to wit:

United States' circuit court, seventh circuit, for the district of Ohio, July term, 1828.

A. SHANE et al., *ats.* JAMES E. SMITH

John M. Goodenow, counsel for the defendants, states to the court here, that he is the original and principal counsel in this cause; and upon his advice and humble exertions, he believes the defendant, Abraham Shane, chiefly relied in the conduction of his defence. That, during the spring season preceding the last July term of this court, the said Shane was about to give notice, and intended to proceed to take depositions of witnesses, which were considered by his counsel material on the trial of this cause, and would have given such notice, and proceeded to take said depositions, had not the said Goodenow, as his counsel, advised him that he need not then take said depositions; that a subsequent period would do as well, for that the cause would not certainly be tried at the then next July term. The said Goodenow further states to the court here, that he gave the said Shane the aforesaid advice, touching the taking of said depositions, in consequence of an arrangement which he had entered into with Mr. Silliman, the counsel, or one of the counsel, for the complainant in this cause. That, in the said spring season, and before he gave said instruction to the said Shane, he had seen Mr. Silliman, and twice conversed with him on the subject of the trial and agreement of this cause, and requested of Mr. Silliman that the cause might stand continued at the said July term, stating to him that he, the said Goodenow, was under an indispensable obligation to be in the city of New York about the time of the sitting of the court at said July term; and then understood Mr. Silliman to say, in unequivocal language, that said cause should stand continued, if he, the said Goodenow, could not for the reason aforesaid attend said court. That, under a full and confident reliance upon this understanding with Mr. Silliman, the said Goodenow gave the assurance to the said Shane, that said cause would not be tried, and, upon such assurance, the said Shane postponed the taking of said testimony; that the said Goodenow had no idea of said cause being tried, or of its having been heard at July term, until his return from New York the last of said July; that he is fully confident that said Shane would have taken the depositions of Gen. Samuel Herrick and the Hon. Judge Clark, and perhaps others, before the said July term, and been perfectly ready for a hearing in said cause at that term, had it not been for the arrangement so made as aforesaid with Mr. Silliman, for the continuance of said cause, and the assurance thereupon given to him by the said Goodenow; and that said cause was not at the said July term, when the same appeared to have been submitted and argued by the counsel, fully prepared for submission and agreement on the part of the defendants. The said Goodenow further states that General Shane was in

the transaction, upon which this is founded, the sole actor or agent on the part of the defendant; that Mr. Ewing has been associated with the said Goodenow in the defence since the death of the defendant, Gov. Meigs, and had never, as he understands and believes, consulted with, or been instructed by, the said Shane, who, alone, has been capable of giving any advice to counsel in the cause. The said Goodenow further states, that, since the submission of this cause at the last July term, he has several times conversed with Mr Silliman respecting the understanding with him mentioned in the fore part of this statement, in which he has been informed that there was a misunderstanding on his part as to the extent of the agreement: with regard to the contemplated continuance, that he only intended to be understood, and thinks he expressed himself, no farther than that for his own part he was content the cause should be continued, but did not intend to bind his client to the continuance of the cause against his own wishes on the subject. This statement is made respecting Mr. Silliman's understanding of the agreement, to prevent any incorrect or unjust inference against his integrity, which no one would more unwillingly impeach, than the said Goodenow, who now presumes the misconception was on his part, but repeats that such he conceived the agreement to be, that he had not an earthly doubt but the cause would be continued, and his client have ample time to prepare for trial. And he now asks the court to receive the testimony of General Herrick and Judge Clark, together with the documents and letters which the said Shane has recently found, and which are material to the matter in issue between the parties.

JNO. M. GOODENOW, *Counsel for def'ts.*

On motion of the respondents' counsel, founded on a statement now filed, it is ordered by the court that the documents and letters mentioned in said statement, to wit, the bond referred to in the answer of defendant, Shane, and a brief or memorandum, also mentioned in said statement, together with several letters from John S. Wills to the said Shane, to wit, one dated Zanesville, May 31, 1815, one dated Columbus, April, 1816, and one dated West Union, Oct. 25, 1815, one dated Columbus, March 20, 1817, and one dated Washington city, 10 Nov. 1816, be received in evidence, and filed in this cause; and that the deposition of Samuel Herrick and James Clark, taken since the last July term of this court, be received with the consent of the complainant's counsel, or further time be allowed said complainant to take said depositions anew; and the counsel for the complainant here consents that said depositions may be received and filed in the cause, which is done; which said depositions are as follows, to wit:

Circuit court of the United States in and for the district of Ohio.

JAMES E. SMITH,
versus
ABRAHAM SHANE, SOPHIA MEIGS, and MARY ANN JACKSON. } *In chancery.*

Deposition of Samuel Herrick, to be read in evidence on the trial of the above cause. Before me, the subscriber, personally came Samuel Herrick, who, being duly sworn, deposeth and saith, that some time about the year eighteen hundred and fifteen, in the month of January, at the town of Chillicothe, he was present, and heard a conversation between Gen. Abraham Shane, one of the defendants, and John S. Wills, Esq., then, as the deponent

thinks, residing at Columbus, in which conversation John S. Wills said to Mr. Shane, that he, Wills, had not at any time sold or disposed of any land warrant which he had issued in the name of one Buford to Col. James Johnson. Mr. Wills further said he had not at any time made any contract with said Johnson, or received any consideration from him for such purpose; and that if Col. Johnson at any time had the possession of the said land warrant, he, Johnson, had obtained it from him, Wills, improperly in some of his, Wills's, imprudent moments; by which I understood him to mean his intemperate moments, as I knew Mr. Wills was then, and had for some time before that time been subject to intoxication.

Question by defendants' counsel. Was Col. Wills, at the time you had this conversation with him, free from intoxication, or otherwise?

Answer. He might have been drinking, but I think he was free from intoxication.

SAMUEL HERRICK.

Sworn to subscribed before me, at my office in Columbus, this 27th December, 1827.

D. W. DESHLER, *Jus. Peace.* [SEAL.]

I agree to admit the deposition, if the court should again hear the cause or any question arising out of it.

W. SILLIMAN, *for comp't.*

Circuit court of the United States, district of Ohio.

JAMES E. SMITH,
versus
ABRAHAM SHANE, SOPHIA MEIGS, and MARY ANN JACKSON. } *In chancery.*

The complainant will take notice that the respondents will proceed to take the depositions before competent authority, on Monday, the 30th day of June, 1828, at the office of Andrew Seaton, Esq., in New Philadelphia, Tuscarawas county, between the hours of eight o'clock A. M. and nine o'clock P. M., of said day; said deposition to be used in the cause above entitled, at which time and place the complainant, if he sees cause, attend. 28th June, 1828.

A. SHANE.

Circuit court of the United States, district of Ohio.

JAMES E. SMITH,
versus
ABRAHAM SHANE, SOPHIA MEIGS, and MARY ANN JACKSON. } *In chancery.*

Deposition of James Clark, Esq., to be read in evidence in the above cause. Personally appeared before me, the subscriber, one of the justices of the peace of the county of Tuscarawas, in the State of Ohio, came James Clark, who on his solemn oath deposeth and saith, that in the year 1803 this deponent settled in that part of Washington county which now is a component part of the county of Tuscarawas aforesaid, about sixteen miles from New Philadelphia, the present seat of justice of said county, where he shortly afterwards removed, and there remained until the year 1817; that shortly after his settlement in the county aforesaid, he acquired a pretty general knowledge of the situation, quality, &c., of the land therein, and more particularly of the military lands situated therein, and the names of

the owners thereof; that in 1808 he became acquainted with one James Johnson, who owned, or pretended to own, a large quantity of land in said county. Among lands so claimed by him was 400 acres in the 3d qr. t. and r., which was afterwards bought by Henry Laffer, Esq., of said county of Tuscarawas, from Doctor McDowell, the original owner, which circumstance, together with that of his having sold a tract of land to one Henry Sills, of said county, which it was generally reported and believed he did not own, induced me to believe that the claim he laid to the land now in suit was not a good one, but was made for the purpose of preventing others from making inquiry after the original or legal owners, until he could render his claim perfectly safe by purchasing it himself—a practice frequently resorted to by land speculators of that period; this was the general opinion at the time: and as the country was, at that time, fast settling, and land in demand, and sold for good prices, there were good speculations to be made by buying from non-residents, and selling again; but the greatest difficulty was in finding the residence of the real owners, which was a subject of great inquiry among a number of people in said county. This deponent further states, that from the 1808 until the present time he has been well acquainted with Abraham Shane, one of the defendants in the above suit; that he and said Shane had frequent conversations concerning the land now in question; that we both endeavored to find out the residence of Col. Buford, in whose name the land was located, and if possible to purchase it of him jointly; that this deponent also saw two letters from Col. Buford to A. Shane aforesaid, which left no doubt on his, deponent's, mind that the land belonged to Gibson or John S. Wills, and not to said Johnston, as he, said Johnston, had frequently alleged; that said Shane always declared his opinion to be the same. That after said Shane had returned from the residence of said Wills, whither he had gone to make the purchase, he told this deponent that he had made the purchase, and also the price he had paid or was to pay therefor, and that this deponent declined taking part in the purchase, thinking said Shane had given too much, (two dollars per acre,) the usual price at that time from non-residents being one dollar per acre or less, and for the want of funds to pay that price. Said deponent saw John S. Wills aforesaid in New Philadelphia, who in conversation stated that he had sold the land (that is now in question) to Abraham Shane aforesaid, that he had given said Shane a good bargain in it, and thought he would be able to make something handsome out of it, which he would be glad to see, as he thought him deserving of it. I understood from the language of said Wills that Gen. Shane's title then acquired was good. I am confident that said Wills expressly asserted to me that Shane's title was good.

Question by Gen. Shane. Do you know of Wills having commenced, since the above transaction, a suit in the c. c. pleas against me, and if Mr. Wills was, by reason of that suit, afterwards unfriendly with me?

Ans. I do not recollect that Wills commenced a suit in the court of common pleas of Tuscarawas county since the forementioned transaction, and unconnected therewith, in which Wills failed; and I know from common report, that, in consequence of the transaction on which said suit was founded, said Wills became very unfriendly to Gen. Shane.

JAMES CLARK.

The State of Ohio, Tuscarawas county, ss.

I do hereby certify that the within deposition was reduced to writing by me, at my office, the 30th day of June, A. D. 1828, between the hours of

9 o'clock A. M. and 9 o'clock P. M. of said day, in pursuance of the enclosed notice, and that the same was sworn to and subscribed in my presence; the said James E. Smith, complainant, did not attend.

Given under my hand and seal, the day and year above written.

ANDREW SEATON, *Justice of the peace.* [L. S.]

The State of Ohio, Tuscarawas county, ss.

I, James W. English, clerk of the court of common pleas for said county, do hereby certify that Andrew Seaton, Esq., before whom the annexed deposition was made, was at the time thereof and now is an acting justice of the peace in and for said county, duly elected, commissioned, and sworn to act as such, and to whose official acts full faith and credit are due.

In testimony whereof, I have hereunto set my name, and affixed the seal of my office, at New Philadelphia, the first day of July, in the year of our Lord one thousand eight hundred and twenty-eight.

JAMES W. ENGLISH. [L. S.]

And this cause is continued.

And afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and twenty-eight, this cause was further continued.

And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and twenty-nine, this cause came on this day to be heard on the bill, answers, and exhibits, and was argued by counsel; upon consideration whereof, the court is of opinion that Abraham Buford ought to be made a party defendant, before a final decree can be pronounced between the parties; it is therefore ordered that the said cause stand for the making of the said Buford a party defendant. Thereupon, on motion of the complainant, by his counsel, the said Abraham is made a party defendant to this cause, and process is ordered to issue against him, returnable to the next term, and this cause is remanded to the rules to be proceeded in against said Buford. And thereupon the said complainant, by C. Hammond, Esq., his counsel, filed in court here his supplemental bill, as follows, to wit:

To the honorable the judges of the circuit court of the United States for the seventh circuit, and district of Ohio, in chancery sitting. The supplemental bill of complaint of James E. Smith. Your orator, humbly complaining, showeth unto your honors, that your orator, at the September term of this court, in the year 1822, exhibited his bill in chancery against Abraham Shane and Return J. Meigs, setting forth and claiming that your orator, with one James Johnston, in the year 1799, entered into a partnership to purchase and locate land warrants in the United States' military district, in the now State of Ohio; that they made a purchase from one John S. Wills, in the year 1800, of a land warrant issued to Abraham Buford, and located the same on certain lands in the bill specified, for which a patent issued to the said Abraham Buford on the 6th August, 1801; that they took possession of said lands, and paid the taxes thereon up to the year 1817, and that the said Buford, at all times from the sale of said warrant by Wills, recognised said Wills as the owner thereof, and was ready and willing to execute a conveyance to any person showing his claim under said Wills to said land. Your orator further sets forth in said bill, that the said Shane and Meigs fraudulently, and with knowledge of your orator's equitable right to said land, and by representing themselves to be the owners of the interest of

said Wills, and as authorized by him to receive a conveyance from Buford, fraudulently obtained from said Buford a quit claim conveyance for said land, dated on the 15th day of May, 1815, and praying a decree against said Shane and Meigs for the conveyance to your orator of the land in said bill specified. To which bill the defendants answered, and claimed to have purchased the said lands of said Wills, and to have obtained the said conveyance from said Buford in good faith, without knowledge of your orator's equitable right; and these exhibits were filed, and depositions taken. And thereupon, the court, having ordered that the cause stood for making the said Abraham Buford a party to this suit, and your orator having obtained leave to make the said Buford a party, your orator, by way of a supplementary bill, charges that the said Buford, as in said original bill is set forth, through the agency of Thomas Gibson, sold his said land warrant to said Wills, who sold it to your orator and the said Johnston, who caused the same to be located on the lands in the bill mentioned for their own account, and obtained and held the patent, and took possession of and paid the taxes on said land. And your orator further charges, that the said Buford was at all times, previous to the execution of the quit claim deed to Shane and Meigs, ready to execute a conveyance to the person legally or equitably entitled under said Wills. And your orator also charges, that the said Buford received the purchase money from the said Wills, and that he made and executed the said quit claim deed to said Shane and Meigs in confidence of his contract with said Wills, and in consequence of his belief that said Wills had authorized said Shane and Meigs to receive said conveyance. Your orator refers to his said original bill, to which this is supplemental and amendatory, as to said Buford, and prays that process issue against said Buford, who is a citizen and resident of the State of Ohio, and that he make full and perfect answers to all the matters in the original bill, and in the supplementary and amendatory bill contained, as fully as if the same were here again repeated and interrogated. And your orator prays such relief in the premises against the said Buford as to equity and good conscience shall seem right. And your orator also prays, as in his original bill is prayed, and will pray, &c.

C. HAMMOND, *Sol. for comp't.*

And thereupon this cause was further continued.

And afterwards, to wit, on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and twenty nine, the said Abraham Buford filed in court here his answer to the bill of complaint of the said complainant in the premises aforesaid, as follows, to wit:

To the honorable the judges of the circuit court of the United States for the seventh circuit, and district of Ohio, in chancery sitting. The separate answer of Abraham Buford to the bill of complaint of James E. Smith, in this court exhibited against him and against Abraham Shane and the heirs at law of R. J. Meigs, deceased. This respondent, saving and reserving to himself all exception to said bill, for answer to so much thereof as he is advised is material for him to answer unto, he answers and says, that true it is, as in said bill stated, that this respondent, being owner of a land warrant for military services, capable of being located upon the United States' military lands in the Territory now being part of the State of Ohio, before the year 1799 delivered said warrant to Col. Thomas Gibson, then residing at Chillicothe or Cincinnati, and authorized him to make sale of the same.

This respondent was advised that said Gibson made sale of said warrant to one John S. Wills, in which sale this respondent acquiesced, and was at all times ready to do any act to confirm the same. Many years after this transaction, this respondent received a letter from Abraham Shane, making inquiry respecting certain lands which he was supposed to own; in answer to which, this respondent wrote a letter to said Shane, informing, as well as this respondent now recollects, of the disposition he had made of said warrant. This respondent received a second letter from Shane, upon the same subject, and made him the same reply; afterwards the said Shane applied to this respondent for a deed for said land, and produced such evidence as satisfied this respondent that a patent had issued in his name for certain land upon said warrant, and that said Wills had authorized said Shane to receive a deed for the land from this respondent. In consequence of this information, and in the belief that he was completing in good faith the contract originally made with Wills, this respondent executed the deed to Shane and Meigs in the bill referred. This respondent made no sale to said Shane, and received no consideration from him. This respondent disclaims all interest in the subject-matter of dispute in said bill. This respondent knows nothing of the matters in said bill charged, in relation to the contracts between the complainant and Wills, or between his co-defendant and Wills. This respondent denies all fraud and unlawful combination; and, having answered, prays to be hence dismissed with his reasonable costs and charges in this behalf expended.

A. BUFORD.

The State of Kentucky, Scott county, ss.

Before the undersigned, a justice of the peace within and for said county, personally came Abraham Buford, the defendant named in the foregoing answer, and made oath that the matters stated therein are true, as he verily believes.

Sworn to and subscribed before me, the fifth day of August, A. D. 1829.

JOB STEVENSON, *J. P.*

State of Kentucky, Scott county, sct.

I, Ben. B. Ford, clerk of the court for the county aforesaid, do hereby certify that Job Stevenson, Esq., before whom the foregoing deposition was taken, was at the time of writing his certificate and subscribing his name, and is yet, one of our commonwealth justices of the peace in and for said county, duly commissioned and qualified as such, and his certificate is in due form of law, and entitled to full faith and credit, as are all his official acts.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, this 5th day of August, 1829, and in the 38th year of this commonwealth.

Ben. B. Ford, C. S. C. C.
By ELIJAH HAWKINS, *D. C.* [L. S.]

And now, at this day, to wit, the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, at the time and place first aforesaid mentioned, came the parties by their counsel, and the bill, answers, and exhibits, being read, and the arguments of counsel thereon heard, the court are of opinion that the law and equity are with the complainant, and they do award, order, and decree, that the defendants

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Abraham Shane and Mary Jackson, make and execute to the complainant, each, a several deed of release of all their respective right and title to the lands in the bill mentioned, to wit, lots numbered seventeen, eighteen, nineteen, twenty, and twenty-one, situate in section three township eight range one of the United States' military land lying in the county of Tuscarawas, in the State of Ohio, and restore to the complainant the possession of said lands, each separate deed of release to be executed and delivered to the said complainant, his heirs or assigns, on or before the first day of April, 1830; and in failure thereof, this decree is to operate as a conveyance, in vesting the title to the said James E. Smith, the complainant, his heirs or assigns, the same being first duly recorded in the recorder's office of the county of Tuscarawas, where said lands lie. The court do further award, order, and decree, that the complainant recover of the said defendants, Abraham Shane and Mary Jackson, his cost expended in the prosecution of the suit, and have execution accordingly; and if the said defendants shall refuse to restore to the complainant the possession of said lands on or before the first day of April, 1830, the decree being duly recorded in the recorder's office of the county of Tuscarawas, the court do further order that the complainant may have a writ of habere facias possessionem, directed to the marshal of the district, to deliver possession thereof to the complainant. And as to the defendants, Sophia Meigs and Abraham Buford, the bill is dismissed. It is agreed by the counsel of both parties that the defendant, Buford, at the time he was made a defendant in this cause, was in fact a citizen and resident of the State of Kentucky. It is further agreed that lands in controversy are of a greater value than $2,000; both these agreements to be considered as a part of the record.

And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and thirty, on motion of Abraham Shane and Mary Jackson, by M. Ewing, their attorney, an appeal is allowed to the Supreme Court of the United States, according to the act of Congress in such case made and provided, on condition they file a bond, with Christian Deardorff their bail, in the sum of three hundred dollars; said bond to be given within sixty days from the rising of the court, and filed with the clerk.

And afterwards, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and thirty, the said respondent, Abraham Shane, filed in the clerk's office of said court the following bond, to wit:

Know all men by these presents, that we, Abraham Shane, Mary Jackson, and Christian Deardorff, of the county of and State of Ohio, are held and firmly bound unto James E. Smith, in the sum of three hundred dollars, lawful money, for the payment whereof we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly, by these presents: sealed with our seals, and dated this 28th day of August, A. D. 1830. Whereas, at the December term of the United States' circuit court for the district of Ohio, in the year of our Lord one thousand eight hundred and twenty-nine, upon the hearing and consideration of a certain suit in chancery, pending in said court, wherein the said James E. Smith is complainant, and Abraham Shane and Mary Jackson, heirs at law of R. J. Meigs, deceased, and Sophia Meigs and Abraham Buford, are defendants, it was by said court ordered and decreed that the bill of complaint be dismissed as to the said defendants, Sophia